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People's Watch

Extinguishing Law and Life

Police Killings and Cover-up in the State of Uttar Pradesh

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EXTINGUISHING LAW AND LIFE

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Youth for Human Rights Documentation (YHRD) is a platform consisting of individuals and groups committed to the cause of human rights and social justice. YHRD was consolidated as an autonomous group in February 2020, soon after the episode of communal violence in North-East Delhi. It consists of young lawyers, researchers, human rights defenders, and public-spirited citizens who believe in using the tools of research, documentation, advocacy, intervention, and education to empower disadvantaged and vulnerable groups.
In an increasingly fractured and polarised society having its roots in violent and hierarchal cultures and traditions, YHRD strives to advance counter-hegemonic narratives fuelled by the ideas of justice, dignity and non-discrimination. The attempt is to nurture a knowledge based framework that sustains on rationalism and egalitarianism. In doing so, YHRD seeks to build a platform to bring together the oppressed and their allies for generating critically conscious debates informed by the ideas of liberty, equality and fraternity.

Citizens Against Hate (CAH) is a Delhi-based collective of individuals and groups committed to a democratic, secular and caring India. It is an open collective, with members drawn from a wide range of backgrounds who are concerned about the growing hold of exclusionary tendencies in society, and the weakening of rule of law and justice institutions. CAH was formed in 2017, in response to the rising trend of hate mobilisation and crimes, specifically the surge in cases of lynching and vigilante violence, to document violations, provide victim support and engage with institutions for improved justice and policy reforms. From 2018, CAH has also been working with those affected by NRC process in Assam, documenting exclusions, building local networks, and providing practical help to victims in making claims to rights. Throughout, we have also worked on other forms of violations – hate speech, sexual violence and state violence, among others in Uttar Pradesh, Haryana, Rajasthan, Bihar and beyond. Our approach to addressing the justice challenge facing particularly vulnerable communities is through research, outreach and advocacy; and to provide practical help to survivors in their struggles, also nurturing them to become agents of change.

People's Watch (PW), one of India's leading human rights organizations, seeks to hold the State accountable for human rights violations and advance a human rights culture in society. For over 25 years, PW has fought for the protection and promotion of human rights in the country. Its mission is (i) protecting human rights through monitoring human rights violations, intervention and building solidarity with people's struggle for human rights and (ii) promoting human rights culture through education and conscientizing the larger community. PW has initiated All India Network of NGOs and Individuals working with National Human Rights Institutions (AiNNI) to monitor, engage and pressurize the human rights commissions to function as per their mandate. Human Rights Defenders' Alert - India (HRDA), network of organizations with its national coordination office in PW, provides support and solidarity to human rights defenders at risk throughout the country. PW is also a member of World Organisation Against Torture (OMCT) Geneva, Asian Forum for Human Rights and Development (FORUM-ASIA), Thailand International Dalit Solidarity Network (IDSN), Denmark, International Federation for Human Rights (FIDH), France, CIVICUS (World Alliance for Citizen Participation), South Africa and HRE 2020 (An organisation to promote Human Rights Education in the United Nations).

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EXECUTIVE SUMMARY

Extrajudicial killings are not a recent phenomena in India. While deaths in police firing were earlier seen in "disturbed" areas or conflict zones, they have recently become regular policing practise in many parts of the country. One such state is Uttar Pradesh (UP), which has been an active theatre of "encounter" killings since March 2017. Media estimates suggest that there have been around 8,472 instances of police firing in UP. As a result of this, 146 men have been killed and another 3,302 have been injured with bullets.

This development has received scrutiny from five United Nations Special Rapporteurs. Multiple petitions seeking a fair investigation into these killings are pending at the Supreme Court, and the National Human Rights Commission (NHRC).

On 09.05.18, the NHRC passed an order directing its Investigation Division to conduct fact-finding enquiries into 17 cases of "encounter" deaths in UP. These were to be conducted within four weeks. In May 2018, when the NHRC began its inquiries, the death toll in these police firing stood at 50. Three years later, around 100 more people have been killed by the police in a similar manner. Meanwhile, the NHRC inquiries have either been closed without a proper investigation or remain pending even three years later.

This Report examines the death of 18 young men in these 17 instances of alleged extrajudicial killings by UP police, which were investigated by the NHRC. Spread across six districts in western UP, these killings took place between March 2017 and March 2018. The report evaluates the investigations and inquiries conducted in these 17 cases and examines the role of the investigating agency, Executive Magistrates, Judicial Magistrates and the NHRC, to assess whether they complied with the existing legal framework.

The directions issued by the Supreme Court in *People's Union for Civil Liberties (PUCL)*

v. State of Maharashtra in 2014, (which have the binding force of law) along with the NHRC guidelines, Indian Penal Code, Code of Criminal Procedure, and Indian Evidence Act provide a legal framework for investigation and trial in cases of extrajudicial killings.

The report reveals gross violations of law, both procedural and substantive, by the investigating agency and the judicial magistrates, in investigating these killings. Independent bodies such as the NHRC and oversight mechanisms such as magisterial inquiries have failed to identify these violations of law and have ignored factual contradictions in the police version of events. Instead, they have routinely condoned the unconstitutional procedures followed by the police during these investigations.

The key findings of the Report are as follows –

1. Of the 17 cases analysed, in not one case has an FIR been registered against the police team that was involved in the killing. Instead, in all 17 cases, FIRs have been registered against the deceased victims on charges of attempted murder under section 307 IPC and other offences.

2. The FIRs registered against the deceased victims in each of the 17 cases claim an identical sequence of events leading to the killing – details of a spontaneous shoot-out between police officers and alleged criminals in which the police are fired upon, and then (in self-defence) fire back, leading to the death of one of the alleged criminals, while his accomplice always manages to escape - raising doubts about the veracity of these claims.

3. In violation of the guidelines of the NHRC and the Supreme Court in PUCL, in a majority of cases, the initial investigation was conducted by a police officer from the same police station as the police team involved in the killing, often of the same rank as the senior most person in the "encounter" team. In all these cases, the investigation was later transferred to another Police Station, almost as if to show compliance with PUCL guidelines.

4. In all the cases studied in the report, the investigations conducted by the

'independent' investigating team of a different police station were inadequate. These investigations accept the police version that they killed the victims in "self-defence", even though the justification of self-defence for murder has to be proved and determined through a judicial trial. The Police's defence cannot be presumed from the police version or confirmed through an investigation. No investigation was conducted on whether the use of force was necessary and proportionate. Factual inconsistencies and contradictions were also overlooked. These include –

a. *Post-Mortem Reports show lethal force used* - The bodies of 12 of the victims show multiple gunshot wounds on the torso, abdomen and even on the head; some dead bodies also show fractures. Post-Mortem Reports of five deceased victims show blackening and tattooing around the bullet entry wounds, indicating firing from close range. This contradicts the police claim that minimal force was used or that the bullets were aimed at the lower part of the victims' bodies to immobilize them and ensure their arrest.

b. *Police only sustained minor injuries* - Out of the approximate 280 police personnel involved in these 17 police killings, only around 20 police officers sustained injuries. In 15 out of the 17 cases analysed, the police sustained only minor injuries.

c. *Inadequate proof that the deceased or his accomplice were holding weapons or fired at the Police* - In seven cases, the fingerprints of the deceased were not found on the weapons recovered from the scene of crime. Therefore, the police's claim that the victims used weapons to shoot at them is contradicted by independent record.

d. *No evidence to suggest that retaliatory firing by police was necessary* - There is an effort to present bullet proof jackets with bullets in them as proof that retaliatory firing was required. At least 16 bullet proof jackets contain bullet entries. However, there is nothing to connect these bullets to the weapons that are claimed to have been recovered from the deceased. It has not even been conclusively shown that these bullet proof jackets were actually used in the purported "encounter". In some cases, there is nothing to connect the bullet injuries sustained by the police to the weapons purportedly handled by the deceased.

5. In 16 out of the 17 cases analysed, the investigating officer closed the

investigation by filing Closure Reports in court before the Judicial Magistrates. Overlooking the factual contradictions that emerge from the evidence, the closure report in all the 16 cases confirms the police version that the firing was in self-defence. All the cases were closed on the ground that the victims – who were named as an “accused” - were dead, and that the police could not find any information about the accomplice who escaped the crime scene. This process has been held to be unconstitutional by the High Courts and the NHRC in other instances.

6. In 11 out of 16 cases where a Closure Report was filed by the police, there appears to be an abdication of judicial powers by the Magistrate who has unquestioningly accepted the Closure of the investigation. By naming the deceased as "accused" in these cases, the requirement of the Court to issue notice to the victim family before closing the case was done away with. Instead, Magistrates issued notice to the police officer, the complainant in the FIR, who in turn gives a “no objection” letter to close the investigation. Through this process, the Judicial Magistrates accept the closure of the investigation.

7. The law (Section 176(1-A) of the CrPC) requires an inquiry into the cause of death to be conducted by a Judicial Magistrate, however in at least eight cases, the inquiries were conducted by an Executive Magistrate in violation of CrPC provisions. This violation also indicates that a lack of clarity in the PUCL guidelines is being taken advantage of to evade accountability. The Executive Magistrates held the police killings to be "genuine", acting well beyond their powers and jurisdiction which is only to determine the cause of death and not determine whether an offence has been committed. The Executive Magistrates’ findings and report are based on the police version, and most reports do not even consider forensic or ballistic evidence. The statements of family members have either not been recorded or recorded in a perfunctory manner.

8. Three years after the NHRC directed an investigation into 17 cases detailed in this report, 14 cases have been decided, two cases are still pending and the status of one case is not available in the public domain. Out of the 14 cases decided by the NHRC, 12

cases were closed, finding no foul play on the part of the police, and one case was transferred to the UP State Human Rights Commission. In only one case, the NHRC held that the deceased was killed in a 'fake encounter' by the police. The other inquiries by the NHRC overlook the factual contradictions and inconsistencies in the police narrative. It also turns a blind eye to violations of procedural and substantive law, for instance, the registration of all FIRs against the deceased victims and no FIRs against the police; closing the investigation on the grounds of the police version of self-defence, no judicial determination of the justification of self-defence, violations in the collection and securing of evidence from the scene of crime, often done by police officers belonging to the same Police Station as the police involved in the killings.

9. The burden of ensuring investigation and accountability falls entirely on the victims' families. The families face intimidation, threats, and persecution through false and fabricated criminal cases. At least 13 letters have been submitted to the NHRC about the persecution by state and non-state actors of the victim families and human rights defenders providing legal aid and support to the families. The NHRC neither responded to, nor took on record the letters pertaining to persecution of victims' families. It directed inquiries in cases of the persecution of human rights defenders but closed those inquiries as well.

10. This report lays bare the abject failure of the criminal justice system to ensure accountability for police killings. It shows how the justice system is unable to hold police officers to account for use of force causing death. It exposes the ambiguities and gaps in the Supreme Court's guidelines in *PUCL v. State of Maharashtra*, which are effectively translating, in practice, into impunity for killings. These include introducing ambiguity on FIRs to be registered against the police, introducing vagueness which allows the plea of self-defence to be misused by the police and claimed at the stage of investigation instead of trial, ambiguity regarding mandatory inquiry by a judicial magistrate into police killings and the improbable expectation of a fair and independent investigation by the state police department into crimes by their own colleagues.

LIST OF ABBREVIATIONS

APCLC	Andhra Pradesh Civil Liberties Committee
BJP	Bharatiya Janata Party
CB-CID	Crime Branch, Crime Investigation Department
CBI	Central Bureau of Investigation
CDR	Call Detail Records
CID	Criminal Investigation Department
CM	Chief Minister
CO	Circle Officer
CrPC	The Code of Criminal Procedure, 1973
Dy	Deputy
DIG	Deputy Inspector General
FIR	First Information Report
FSL	Forensic Science Laboratory
GD	General Diary
IG	Inspector General
IO	Investigating Officer
IPC	Indian Penal Code, 1860
NCRB	National Crime Records Bureau
NHRC	National Human Rights Commission
OHCHR	Office of High Commissioner for Human Rights
PCA	Police Complaints Authority
PMO	Prime Minister's Office
PMR	Post Mortem Report
PS	Police Station
RTI	Right to Information
SC	Supreme Court
SO	Station Officer
SHO	Station House Officer
SI	Sub Inspector
SP	Superintendent of Police
SSI	Senior Station Inspector
STF	Special Task Force
SWAT	Special Weapons and Tactics
UN	United Nations
UP	Uttar Pradesh

NOTE ON TERMINOLOGY

First Information Report (FIR) is the first piece of information recorded in the form of a document by a police officer on the commission of an alleged/cognizable offence. It can be given either by the aggrieved person or any other person. It is the first step in accessing/activating the Criminal Justice System.

Final Report is made under Section 173, CrPC and is the outcome of a complete process of investigation. It must be submitted to a Magistrate. A Final Report may either be a chargesheet against the accused, or a Closure Report closing the case.

Charge Sheet is a formal record that notifies a person of criminal charges being issued against them. It is written after the investigation conducted by the police on the basis of the FIR.

Closure Report is a formal record submitted to a Magistrate for closing the investigation if the police conclude that either no offence appears to have been committed or the police could not identify the accused who committed the crime.

Post Mortem report (PM) is an examination of a dead body. It is performed to establish the cause of death and/or ascertain any other bodily occurrences.

Ballistic Report involves the examination of evidence from firearms that may have been used in a crime.

Magisterial Inquiry is an inquiry conducted by an Executive or Judicial Magistrate other than a trial

Call Detail Records are a record of the calls made from and received on a phone number, the date, time and duration of the calls and the location of the phone at the time of these calls

General Diary is a record of all important transactions/events taking place in a police station, including departure and arrival of police staff, handing over or taking over of charge, arrest of a person, details of law and order duties, visit of senior officers etc. It also contains details of any information received relating to crimes and FIRs registered in the particular Police Station.

Inquest Report is a document prepared on the basis of an Inquest that is a public inquiry into the circumstances of death of a person/s. It is done to establish the identity of the deceased, facts pertaining to time and place of the incident and other evidence thereby placing everything on public record.

Quasi Judicial Body is a body which has powers and procedures resembling those of a court of law or judge. It is mandated to objectively determine facts and draw conclusions, so as to provide the basis of an official action. Their powers are usually limited to a very specific area of expertise and authority. National Human Rights Commission, National Commission for Women, National Commission for Minorities, etc. are examples of quasi-judicial bodies.

Chapter 1
INTRODUCTION

INTRODUCTION

1.1 Purpose of this report

Extrajudicial killings, understood in international law as the deliberate killing of a person outside any legal framework, are among the gravest violations of human rights. In India, such killings are often known as "police encounters" or "encounter killings". Unfortunately, domestic law has failed to clarify their true nature as grave human rights violations, resulting in their normalization rather than prevention.

While extrajudicial killings have a long history, both, in the context of national security circumstances and everyday policing situations, more recently since 2017, Uttar Pradesh (UP) has seen an alarming rise in alleged extrajudicial killings in the guise of "crime control". As per latest estimates in media reports, 146 people have been extrajudicially killed by the police in UP.[1] Not only are the numbers of these killings concerning in themselves, but the state government, and police's persistent justification of these tactics as "necessary" and "effective" disguise their spiraling illegality. These are evidence of serious concerns regarding the rule of law and police accountability, as well as the state of routine policing in the state.

This report documents the increase in "encounter" killings in UP. It attempts to deconstruct the extraordinary normalization of "encounter deaths" in the state and the adoption of extrajudicial executions by the police as a mechanism for crime control.

Through an in-depth study of 17 cases of alleged extrajudicial killings by police in UP, this report attempts to assess the account offered by the state government and its police to justify these killings. The report focuses on the follow-up investigation carried out by various stakeholders of the criminal justice system in these cases, to determine whether the killings were justified in law. The report also examines whether the process of investigation carried out in these cases complied with the legal standards and procedures laid down by the Supreme Court and the National Human Rights Commission (NHRC).

The report also offers broader reflections on the state accountability, and access to redress, as well as fundamental gaps in law and its enforcement in the state.

1.2 Methodology

This report is based on 17 cases of alleged extrajudicial killings by police in UP. All these killings took place in the districts of Saharanpur, Shamli, Muzaffarnagar, Meerut, Aligarh and Gautam Budh Nagar between March 2017 and March 2018. The family members of the 18 deceased victims[2] claimed that these deaths were extrajudicial killings by the police.[3] In May 2018, two complaints were filed with the NHRC by nine affected families of victims and 12 civil society organizations, seeking a fair and independent investigation by the NHRC into these 17 instances of killings by UP Police. The NHRC registered these complaints as Case No.10824/24/0/2018-AFE and passed an Order on 09.05.18 (**Annexure1**) directing the NHRC's Investigation Division to conduct fact-finding enquiries into the 17 cases by recording the statements of the affected families and conducting other necessary examinations.[4]

Of these 17 cases, 12 cases have been closed by the NHRC after finding "no foul play" on the part of the police and one case was transferred to the UP State Human Rights Commission. In only one case, the NHRC held that the deceased was killed in a "fake encounter" by the police, that is, in an extrajudicial manner. In this case, the NHRC ordered further investigation by an independent agency and directed compensation to be paid to the affected family. While more than three years have passed since the NHRC took up these cases, two cases are still pending and the status of one case is not available in the public domain.[5]

In the 12 cases which were closed by the NHRC, the civil society organizations who were the original complainants before the NHRC wrote multiple letters to the NHRC seeking documents based on which the cases were closed. An incomplete set of documents, only comprising the NHRC's inquiry reports for six cases was initially provided, after a delay of almost three months. Another set of incomplete documents pertaining to eight cases was provided by the NHRC after the complainants filed RTI applications. A second

appeal regarding one of these RTI applications is currently pending before the Central Information Commission.[6] The complainants have also sent letters seeking these documents for the remaining cases closed by the NHRC but have received no response from the Commission yet.

The documents provided by the NHRC, which have been analyzed in this report, include documents relating to the police investigation of the case, the Magisterial Inquiry Report with annexures, as well as the evidence collected, and statements recorded in NHRC's own inquiry.[7]

These 17 cases were tracked by the researchers over a period of three years. The affected families and the civil society organizations also followed the investigation carried out by the NHRC. In some of these cases, the affected parties also litigated various issues pertaining to these killings in courts.

For the purpose of this report, the materials pertaining to each of these cases was collected from various sources including (i) the primary documents received from the NHRC, (ii) fact-finding reports prepared by the civil society groups, (iii) media reports, (iv) complaints filed by the victims' families and (v) the orders passed by various courts. Furthermore, the report has drawn on the records of the case *People's Union for Civil Liberties v. Union of India*,[8] a public interest litigation filed in the Supreme Court in 2018, seeking an independent inquiry into the extrajudicial killings in UP.

Profiles of Deceased Victims

Mansoor, aged 35, was a resident of Village Pathanpura, District Saharanpur. He was allegedly killed on 27.09.17 by police officers of Sadar Bazaar Police Station in District Meerut. No trial has been conducted against the 19 police officers involved in the alleged killing.

Shamim, aged 35, was a resident of Village Sisauna, District Muzaffarnagar. He was allegedly killed on 30.12.17 in Village Bhalwa, by officers of Jansath Police Station located in District Muzaffarnagar. No trial has been conducted so far against the 18 police officers involved in the alleged killing of Shamim. His family members have allegedly been threatened and intimidated by the police.

Furqan, aged 33, was a resident of Village Titarwada, District Shamli. He was allegedly killed on 22.10.17 by police officers of Budhana Police Station in District Muzaffarnagar. No trial has been initiated so far against the 16 police officers involved in the alleged killing. His family members allege that they have been threatened and intimidated by the police.

Waseem, aged 36, was a resident of Village Jahanpur, District Shamli. He was allegedly killed on 28.09.17 near Saroorpur Police Station in District Meerut. No trial has been conducted so far against the 19 police officers involved in the alleged killing. His family members have alleged that Waseem was 17 years old when he was killed and that they have been threatened by the police.

Kasim, aged 40, was a resident of Village Vishambhara, District Mathura. He was allegedly killed on 02.08.17 at his residence by police officers. No trial has been conducted so far against the 28 police officers involved in the alleged killing. The family members have alleged that they are facing threats and intimidation by the police.

Jaan Mohammad, aged 22, was a resident of Village Patti Bhojan, District Baghpat. He was allegedly killed on 17.09.17 within the jurisdiction of the Police Station Khatauli, Muzaffarnagar District in police action. No trial has been conducted so far against the ten police officers involved in the alleged killing. The family members have alleged facing harassment and intimidation by the police.

Noor Mohammad, aged 30, was a resident of Shyamnagar, District Meerut. He was allegedly killed on 30.12.17 near Shatabdi Nagar in District Meerut in police firing. No trial has been initiated so far against the 16 police officers involved in the alleged killing.

Ehsaan, aged 46, was a resident of Village Teliwara, District Shamli. He was allegedly killed on 25.03.18 within the jurisdiction of Police Station Kotwali Mandi in police firing. No trial has been conducted so far against the 25 police officers involved in the alleged killing.

Aslam was allegedly killed on 09.12.17 at Dadri, District Gautam Budh Nagar, in police action. No trial has been initiated so far against the police officers involved in the alleged killing. His family members allege that they are facing threats and intimidation by the police.

Ikram, aged 40, was a resident of Village Baraut, District Baghpat. He was allegedly killed on 10.08.17 at Kairana Bypass in District Shamli in police firing.

No trial has been conducted against the 18 police officers involved in the alleged killing. His family members have alleged being threatened and harassed by state and non-state actors.

Shamshad, aged 35, was a resident of Village Sherpur, District Saharanpur. He was allegedly killed on 11.09.17 in front of ITC Gate, in District Saharanpur in police action. No trial has been conducted so far against the 23 police officers involved in the alleged killing. His family members have alleged being harassed and intimidated by the police.

Sumit Gujjar, aged 20, was a resident of Village Singhawali Aheer, District Baghpat. He was allegedly killed on 03.10.17 at ATS Chowk, Greater Noida in police action. No trial has been conducted so far against the 19 police officers involved in the alleged killing, even though the NHRC has held that the killing was a "fake encounter". His family members have been intimidated by the police, and false charges of rape and dacoity have been filed by the police against them.

Nadeem, aged 30, was a resident of Village Baagowali, Nai Mandi, District Muzaffarnagar. He was allegedly killed on 08.09.17 in a village jungle, in Karoli, District Muzaffarnagar in police firing. No trial has been conducted so far against the nine police officers involved in the alleged killing. His family members have alleged facing threats and intimidation by the police before and after the alleged killing.

Gurmeet was a resident of Nandanpur, Naagal, District Saharanpur. He was allegedly killed on 31.03.17 near Rankhandi Railway Crossing, in District Saharanpur in police firing. No trial has been conducted so far against the eight police officers involved in the alleged killing. The family members have alleged that they have been harassed and threatened by the police when they tried to register a complaint.

Naushad and Sarvar were residents of Village Bhura, District Shamli. Both were allegedly killed on 29.07.17 at Village Bhura, District Shamli in the same instance of police firing. No trial has been conducted so far against the 18 police officers involved in the alleged killing. Their family members allege facing harassment and threats by state and non-state actors.

Ramzani was a resident of village Akbarabad in District Aligarh. He was allegedly killed on 08.12.17 in District Aligarh in police firing. No trial has been conducted so far against the 15 police officers involved in the alleged killing.

Akbar was killed on 03.02.18 in Village Gujjarpura, District Shamli in police firing. No trial has been conducted so far against the 22 police officers involved in the alleged killing. His family members have faced harassment and intimidation by the police.

1.3 Structure of this report

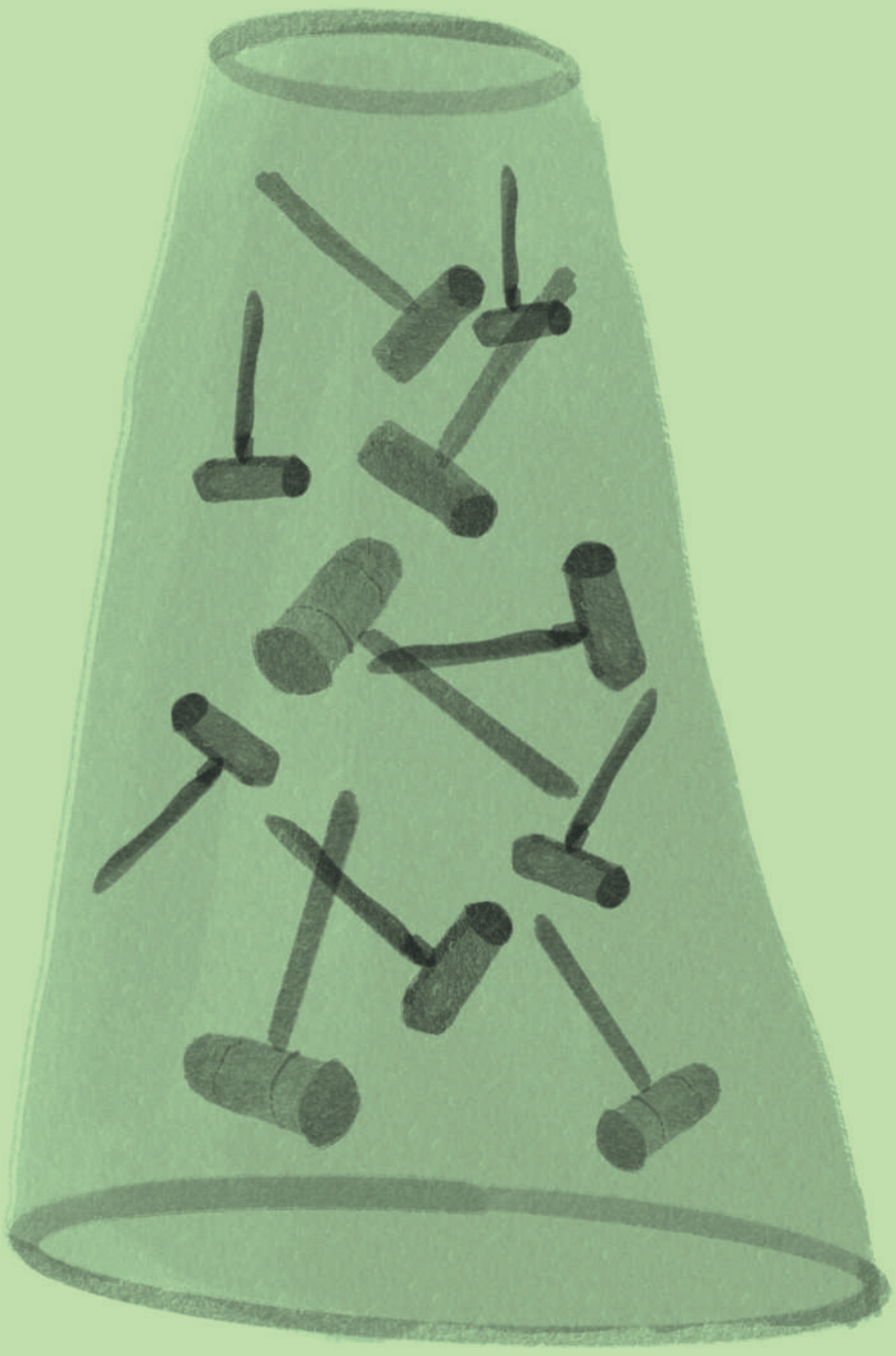
This report is set out in six chapters. The present chapter presents the rationale for the report and details its methodology and provides a brief profile of the 18 victims of the extrajudicial killings profiled in this report. Chapter two lays out the broad socio-political background of extrajudicial killings in India with a focus on the recent trend of rise in alleged extrajudicial killings in UP and explains the existing legal framework for the investigation of these cases.

The findings of the report, including the extent to which the applicable Supreme Court guidelines have been complied with in the 17 cases, are discussed in Chapters three and four. Chapter three discusses the police investigations and the subsequent closure of the 17 cases by Judicial Magistrates. Chapter four examines the inquires conducted by the Executive Magistrate and the NHRC in these cases.

Chapter five documents the attempts made by family members of the 18 deceased victims to access justice and records their engagement with the criminal justice system. Chapter six focuses on gaps in the existing guidelines and their enforcement; and provides an evaluation of how the law has fared in ensuring that the state is accountable; the performance of institutions tasked with the oversight role; and the impact of extrajudicial killings on the general functioning of the police.

Chapter 2

EXTRAJUDICIAL KILLINGS: CONTEXT AND LEGAL FRAMEWORK



EXTRAJUDICIAL KILLINGS: CONTEXT AND LEGAL FRAMEWORK

2.1. Prevalence of Extrajudicial Killings in India

Extrajudicial killings are not a recent phenomenon for India. The terms "police encounters" or "encounter killings" are used in the Indian context to describe police killings of alleged criminals, gangsters, and terrorists in supposedly "spontaneous shootouts", and as a result of "cornered" police officials acting in self-defence.

Civil society groups have long argued that "police encounters" are not "spontaneous shootouts" as claimed by the police. Rather, they are a result of planned and premeditated killings, carried out by the police, where the police stage a scene of a shootout between the alleged criminal and them. The police may be motivated by larger ends – either to win public favour, or in furtherance of police officers' own political or criminal connections.[9]

The State often refers to these killings as "encounters". State's motivation behind the use of the euphemism "police encounters" is telling. It becomes clear that it is used to validate policing methods and deflect from legal accountability. It allows the police and security forces to disregard the rule of law and commit grave human rights violations, and instead promotes vigilante justice by celebrating the actions of police officials in eliminating alleged criminals without accountability.

The *UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions*, Prof. Christof Heyns, turned the terminology of "fake encounters" on its head based on evidence gathered during his visit to India from 19 to 30 March 2012:[10]

"Where they occur, "fake encounters" entail that suspected criminals or persons alleged to be terrorists or insurgents, and in some cases individuals for whose apprehension an award is granted, are fatally shot by the security officers. A shootout scene is staged

afterwards. The scene portrays those killed as the aggressors who had first opened fire. The security officers allege in this regard that they returned fire in self-defence."

In contrast to "police encounter", the term extrajudicial killing focuses on whether the use of force by the police or security forces was excessive or proportionate to the resistance shown by the alleged criminal during his arrest.[11] It depicts the deprivation of the life of an individual without full judicial or legal process, with the involvement, complicity, or acquiescence of the government or its agents.[12] Yet, characterizing these killings as "extrajudicial" has not been adopted in the legal texts and common parlance in India.

Governments have refused to acknowledge the prevalence of "extrajudicial killings" and routinely deny any illegality in killings of this nature.[13] As a result, police and security forces have had a relatively free hand to "employ" these as a tactic to quell political dissent in various contexts of disturbances or conflicts. Starting from the Naxalbari movement in the 1960s in Bengal to the Maoist insurgency in the dense forests of Andhra Pradesh in the 1980s, extrajudicial killings have been a recurring phenomenon.[14] When Punjab witnessed an internal disturbance, the same methods were deployed.[15] Similarly, extrajudicial killings have been used as a state-sanctioned method to eliminate terrorists/ Maoists and other insurgents under the guise of national security in the conflict areas of Manipur, Chhattisgarh and Kashmir.[16]

But the oft-repeated justification of extrajudicial killings that applies in "disturbed" areas or conflict zones does not explain the appeal of extrajudicial killings as policing policy of choice[17] in many "peaceful" parts of the country now. For example, Mumbai witnessed a spate of encounter killings in the 1990s to tackle the reported rise in organized crime.[18] Since 2017, UP has been witnessing an increase in the numbers of police killings as a so-called policy response for crime control in the State.[19] It appears that a similar policy is being replicated in Assam. Media reports indicate that since May 2021, at least 25 suspected militants and criminals have been killed and around 39 have been injured in police shootouts in the state. The police have claimed that the alleged criminals tried to

snatch service weapons or attempted to escape from police custody.[20]

Furthermore, the increasing acceptance of extrajudicial killings as a routine part of policing in areas which are not facing any known internal disturbance is an alarming trend. Extrajudicial killings have become an acceptable law enforcement method in various states and is supported by leadership in the police departments and the political executive. More worryingly, the phenomenon is becoming culturally entrenched in how citizens have begun to perceive crime and a response to it. For example, there have been multiple examples of citizens who seem to celebrate[21] such methods of vigilante justice, as a solution to crime reduction.[22]

2.2 Rise of Extrajudicial Killings in Uttar Pradesh: A Context

UP has been an active theatre of extrajudicial killings for a few years now. Since March 2017, when the Bharatiya Janata Party (BJP) came to power in the State, the number of police killings has increased at an alarming rate.[23] As per some estimates, since March 2017, UP police have shot at and injured at least 3,302 alleged criminals, with bullet wounds on their legs,[24] in around 8,472 instances of police firing. As per the latest report, the death toll in instances of police firing stands at 146.[25] In May 2018, when the NHRC ordered an investigation into 17 cases documented in this report, the death toll in these police shootouts stood at 50.[26]

The UP police claim that these 146 deaths were caused in the course of retaliatory firing done in self-defence against armed criminals. However, civil society organizations have raised questions about these police killings and alleged that these are planned and premeditated instances of extrajudicial killings by the police.[27]

The State Government has repeatedly stated that the police actions leading to these killings was a "policy" to curb crime, which is another move towards normalizing police "encounters". For example, Chief Minister (CM) Yogi Adityanath's official Twitter handle celebrated the increase in extrajudicial killings in the State, stating "*430 Encounters in six months 17 dreaded criminals killed*".[28] The CM, along with senior police officials, has

also publicized this so-called "encounter" policy in public speeches and press statements.[29]

Statements by Senior Government and Police Officials Endorsing "Encounter" Policy

- In an interview on a news channel, India TV, in June 2017, UP CM, Yogi Adityanath had stated that the State police would not hesitate to "knock down" criminals if they did not mend their ways.[30] "Agar apradh karenge, toh thok diye jayenge"(If they commit crimes, we will knock them down), he said.[31]
- A few months later, in September 2017, UP CM Yogi Adityanath again stated that, "Police in UP will now respond to a bullet with a bullet. Unlike the previous government, I have given full authority to the force to deal with criminals in the most appropriate way possible."[32]
- On 15 February 2018, the CM stated on the floor of the State Legislature that "the police encounters will continue", adding that "sympathy for criminals was dangerous for a democracy."[33]
- The former chief of the Uttar Pradesh police force, the Director General of Police, Mr. OP Singh, strongly defended the actions of the police. He stated in media interviews that "police encounters" were part of a well chalked out strategy to arrest hardened criminals in the state. He said: "Encounters are part of crime prevention. The fact is that this is not a state policy, but a police strategy. We do not call it an encounter but police engagement. We are engaged with the criminals in a very professional and strategic manner."[34]
- Another senior police officer from UP said in a media statement that, "If the criminal shoots at us, we would shoot him dead. It is not as if there is any written instruction from the government, but the unspoken word is that no criminal will be spared."[35]
- Manzil Saini, a senior officer and the only woman officer in western UP, has been part of multiple "encounters". She stated that, "Police encounters have taken place under all regimes. But what is different this time is that the police have been given a free hand to act against any criminal, irrespective of his political affiliation, caste or religion."[36]

(See **Annexure 2** for a detailed list of statements of government and police officials)

Official publications of the State Government, such as those by the Information and Public Relations Department, routinely list the number of police killings as achievements of a "zero tolerance policy" of the State Government for maintenance of law and order.[37] In another example, a letter sent to all the District Magistrates ahead of the Republic Day celebrations on 26 January 2019, enumerated the figures of killings and injuries by the police as achievements of the State Government in the first 16 months of its rule.[38]

The official and political support for "police encounters" also appears to be backed by legal impunity. Media reports indicate that as of July 2020, magisterial inquiries had been completed in 74 cases where deaths had occurred during police firing. The police were given a clean chit in all these cases. Further, in around 61 cases, closure reports had been filed by the police, to close the investigation, and this had been accepted by the courts.[39]

In December 2019, the Telangana police killed four people accused of raping and murdering a woman in the city of Hyderabad. The act was celebrated by political leaders in India. The UP police was asked by Mayawati (chief of the Bahujan Samaj Party and four-time former CM of UP) to "take inspiration from their counterparts in Hyderabad".[40] In response, the official Twitter handle of the UP police boasted about the large number of extrajudicial executions in the State, and tweeted the following "*The figures speak for themselves. Jungle Raj [criminal rule] is a thing of the past. No longer now. 103 criminals were killed and 1,859 injured in 5,178 police engagements in the last more than 2 years. 17,745 criminals surrendered or cancelled their own bails to go to jail. Hardly State guests.*"[41]

The staged nature of these extrajudicial executions came into sharper focus in July 2020, following the killing of repeat offender Vikas Dubey.[42] He succumbed to his injuries after an alleged shootout with the UP Police in Kanpur. He was the 119th person to be killed by the State Police since March 2017.[43] Hours before he was killed, a plea had been filed in the Supreme Court, seeking protection for Vikas Dubey, fearing that he may be killed in an alleged "police encounter".[44]

Furthermore, the claim that these killings are premeditated and planned is apparently supported by recorded phone conversations of police officers and investigations by media houses. This supports the allegations made by family members of the deceased victims and civil society groups. (See **Annexure 3** for a list of media reports alleging the police shoot outs to be premeditated and planned). On 20 September 2018 - in what appears to be the first time - journalists were "invited" by the police in Aligarh district to watch a live "encounter".[45] On their arrival, journalists saw a team of police officers corner and gun down two men allegedly "armed and hiding" in an abandoned building. The family of the men killed held a press conference on the same evening alleging that the "encounter" was fake.[46]

2.2.1. Strong Response from Key National and International Stakeholders

UN Experts, the Supreme Court and the NHRC have raised concerns on multiple occasions about the rise in extrajudicial executions in UP .

In December 2018, five United Nations Special Rapporteurs[47] expressed alarm about the allegations of large numbers of extrajudicial killings by the State Police in UP since March 2017 and wrote a detailed communication regarding 15 such cases to the Government of India.[48] The UN Experts expressed concern about the pattern of events in the cases. More specifically, this included individuals allegedly being abducted or arrested before their killing, and their bodies bearing injuries indicative of torture. The experts called for (i) an urgent review of the use of force by the UP Police, (ii) a prompt, independent, and thorough investigation into all allegations of potentially unlawful killings and (iii) for perpetrators to be prosecuted. On 11 January 2019, a press statement on this issue was issued by the United Nations Office of the High Commissioner of Human Rights.[49] The Indian Government has not responded to the UN experts yet.

On 14 January 2019, the Supreme Court stated that the police killings in UP require "serious consideration"[50] and agreed to examine a selection of cases in depth. The case titled *People's Union for Civil Liberties v. Union of India*[51] has been pending in the

Supreme Court for the past two and a half years.

On at least four occasions since 2017, the NHRC of India has raised concern over the extrajudicial killings in UP. On 22 November 2017, the NHRC took *suo moto* cognizance of media reports about the Government of UP allegedly endorsing killings by the police in the name of improving the law-and-order situation in the State.[52] In another Notice sent to the State Government on 5 February 2018, the NHRC observed "*the police personnel in the State of Uttar Pradesh are feeling free, misusing their power in the light of an undeclared endorsement given by the higher ups. They are using their privileges to settle scores with the people.*" [53] On 9 May 2018, the NHRC ordered an investigation into 17 cases of alleged extrajudicial killings, based on complaints filed by civil society organizations and victims' families.[54]

Despite these interventions and strictures, extrajudicial killings by police in UP continue. There are no signs of accountability. In November 2018, the State Government filed an affidavit before the Supreme Court in a public interest litigation[55] seeking an independent inquiry into cases of extrajudicial killings in UP. The State Government claimed that the UP Police are only discharging their constitutional and lawful duty to ensure the arrest of accused persons under due process of law. They further claimed that any fatalities are "unintended" and "an unfortunate consequence of lawful and proportionate use of force in self-defence" and "in the execution of their legal duty". Further, the State Government also claimed that the guidelines laid down by the Supreme Court in the case of *PUCL v. State of Maharashtra*[56] and by the NHRC for the investigation of cases of police firing resulting in deaths or injuries, were being strictly complied with.[57]

2.3. Legal Framework for Criminal Redressal against Extrajudicial Killings

This section explains the existing guidelines laid down by the Supreme Court, and the NHRC, and the relevant statutory provisions. Read together, these provide the procedural framework for an investigation into all cases of extrajudicial killings in India.

2.3.1. Extrajudicial Killings as a violation of the Right to Life and Rule of Law

Under international human rights law, extrajudicial killings are a violation of the right to life, which is a non-derogable right.[58] Referred to as "extrajudicial, summary or arbitrary executions" to account for the numerous forms that extrajudicial killings take, the United Nations Office of the High Commissioner for Human Rights has established the following working definition of extrajudicial, summary or arbitrary executions:

"Deprivation of life without full judicial and legal process, and with the involvement, complicity, tolerance or acquiescence of the Government or its agents. Includes death through the excessive use of force by police or security forces."[59]

Article 21 of the Constitution of India enshrines the right to life: *"No person shall be deprived of his life or personal liberty except according to procedure established by law."* The Supreme Court has further clarified that there can be no exceptions to Article 21 and held that, *"where a citizen has been deprived of his life, or liberty, otherwise than in accordance with the procedure prescribed by law, it is no answer to say that the said deprivation was brought about while the officials of the State were acting in discharge of the sovereign functions of the State."*[60]

The Supreme Court has denounced extrajudicial killings as having no place in a legal system governed by the rule of law. It describes the impunity enjoyed by security forces when they commit acts inconsistent with the rule of law.[61] Drawing attention to the absence of any judicial sanction in such cases, the Supreme Court had in fact referred to extrajudicial killings as "administrative liquidation".[62]

International Standards on Extrajudicial Killings

There are two principal sources of international law that establish universal standards towards the prevention and effective investigation of extrajudicial killings –

1. The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions, 1989; and

2. The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016): The Revised UN Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions.

The UN Principle and the Minnesota Protocol, both, aim to protect the right to life and advance accountability by placing a duty on the states to investigate all deaths caused by state agents. According to the Minnesota Protocol, the duty to investigate is triggered where the State "knows or should have known of any potentially unlawful death, including where reasonable allegations of a potentially unlawful death are made".[63]

The Minnesota Protocol has laid down a set of principles with which any criminal investigation into deaths (or serious injuries) must comply. It states that the investigations must be prompt, effective, sufficiently independent, impartial, and reasonably transparent vis-à-vis the victim's family and the general public[64] and must be open for their scrutiny.[65] This requires, at a minimum, that the authorities are "transparent about the existence of an investigation, the procedures to be followed in an investigation, and an investigation's findings, including their factual and legal basis".[66]

Moreover, Section 4 of the Minnesota Protocol describes the strategies and practical steps that should be taken in an effective investigation of a potentially unlawful death.[67] It states that a detailed analysis of the victim's profile, time, and circumstances of the death of the individual, information of those responsible for the death should be provided in a written report.[68] It further states that operational and tactical processes be devised for establishment of facts and preservation of relevant material pertaining to the case.[69] Some of these include, collection, analysis and management of evidence, data and materials, the forensic examination of important physical locations, including the death/crime scene, family liaison, the development of a victim profile, finding, interviewing and protecting witnesses among others.

2.3.2. Specific Guidelines issued by the Supreme Court and the NHRC[70]

In the late 1990s, there was a growing spate of extrajudicial killings of suspected Naxalites and suspected members of People's War Group by the police in Andhra Pradesh. In response, civil liberties groups sought guidelines from the NHRC as part of broader efforts to fill the legal vacuum in terms of state accountability for such killings. The NHRC issued directions on the "Procedure to be followed in cases of deaths in police

encounters" to all states. It required an investigation into cases of "encounter" killings. It specified that the investigation should not be carried out by the same police force, "*As the police officers belonging to the same police station are the members of the encounter party, it is appropriate that the cases are made over for investigation to some other independent investigation agency, such as State CID.*"[71]

In directions issued in 2003[72] and 2010,[73] the NHRC took steps towards introducing greater transparency and accountability, and securing evidence, in cases of extrajudicial killings. It directed that if a specific complaint was made against the police, a First Information Report (FIR) must be lodged; and the post-mortem examination of the victims should be photographed, and video graphed. It required that a magisterial inquiry must mandatorily be conducted and specified the manner of conducting this inquiry. It also required that for every case of death in the course of police action, the Post Mortem Report, Inquest Report, names and designations of police officials involved in the incident, report of forensic examination and report of Ballistic examination should be submitted to the NHRC, within a period of three months.

In 2014, in *Peoples Union for Civil Liberties (PUCL) v. State of Maharashtra*[74] (hereinafter referred to as the PUCL Guidelines) the Supreme Court issued a standard procedure to be followed for an effective and independent investigation of cases of police firing leading to deaths and injuries. The guideline reiterated the directions passed by the NHRC, that included the following:

- An FIR must be registered;
- Investigation must be conducted by an independent CID team, or officers of another police station;
- There must be a mandatory magisterial enquiry and judicial scrutiny under section 190 of the CrPC;[75]
- Compensation must be provided under section 357-A CrPC[76] to the next of kin in case of death;
- It clarified the role of NHRC in case of doubts over the impartiality and independence of the investigation; and

≈ There should be disciplinary action against, and suspension of police officers found guilty.

The guideline added another important requirement – namely, that the police officers concerned must *"surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to their rights under Article 20 of the Constitution"*. As a step towards tackling the impunity enjoyed by police officials, the NHRC had also directed that, *"No out of turn promotion or instant gallantry rewards shall be bestowed on the concerned officers soon after the occurrence"*. This direction was reiterated by the Supreme Court in 2014 in *PUCL v.State of Maharashtra*.

2.3.3. Procedure for Investigation

The PUCL and the NHRC guidelines, along with other criminal law procedures, set out the detailed procedure that should be followed in cases of extrajudicial killings:

1.They require that in cases where police action has led to death, even when in exercise of self-defence, an FIR should be registered.

2. The investigation into circumstances of death including the necessity and proportionality of the force used by the police should commence immediately. This should be done by an independent state CID team or by senior officers of another police station.

3. The crime scene should be secured. Evidentiary material such as fingerprints and bloodstained earth and weapons such as guns, projectiles, bullets, and cartridge cases etc. should be preserved and sent for forensic and ballistic analysis.

4. Post-mortem should be conducted, and video graphed, and a mandatory inquiry should be held by a Judicial Magistrate. Additionally, there should be a Magisterial inquiry into the cause of death by an Executive Magistrate.

5. After the completion of the investigation, a charge-sheet should be filed in the

competent court followed by an expeditious trial.

6. If the investigation shows that the death caused during police firing amounts to an offence under the criminal law, disciplinary action against the police officers must be initiated and the officers would have to be suspended from duty.

7. It is during the trial that the police officers can take the plea of self-defence. They must establish in the Court[77] that the exercise of the right to private defence was on account of reasonable apprehension of death. They must demonstrate that the apprehension occurred on the spot and at the time when the police firing was resorted to, and that the force used was reasonable and proportionate to defend against the claimed attack.[78] It is up to the Trial Court to finally decide, after scrutinising the evidence, whether the death caused in police firing amounts to the commission of an offence or falls within the legitimate exercise by the police of the right to private defence.

However, despite statutory law and judicial pronouncements, domestic law has not been effective in reducing extrajudicial killings. This is partly due to non-compliance of the current guidelines, but more importantly due to the vague and ambiguous nature of the guidelines itself. This report will explain how the ambivalence in the law, coupled with the lack of an independent accountability framework to investigate and prosecute these killings, have ensured that there is no redress in almost all of these cases. For example, as discussed in later sections of this report, for decades, the police have taken advantage of the statutory recognition of self-defence as an exception to penal offences and have used it to grant themselves immunity from investigation and trial. It, therefore, becomes pertinent to test whether the existing law and its execution can ensure accountability and check the abuse of power by the police.

Chapter 3

INADEQUATE INVESTIGATION AND WRONGFUL CLOSURE OF CASES: LACK OF CRIMINAL ACCOUNTABILITY

INADEQUATE INVESTIGATION AND WRONGFUL CLOSURE OF CASES: LACK OF CRIMINAL ACCOUNTABILITY

As explained in Chapter two, the NHRC guidelines and PUCL case laid down a standard procedure to be followed during the investigation of extrajudicial killings. These guidelines were issued to ensure a thorough and independent investigation in such cases, leading to the prosecution of guilty officers, and to check the abuse of power by the security forces during the pendency of such investigations.

This chapter examines the chronology of investigation carried out in the 17 cases analysed in this report. It assesses whether these investigations (from the stage of registration of the FIR to the filing of the chargesheet before the competent court) adhered to the procedural requirements set out in the PUCL and the NHRC guidelines and explains whether they resulted in the prosecution of police officers in criminal trials.

The first section examines the FIRs registered in the 17 cases and provides a brief analysis of the contents of the FIRs. The second section looks at the steps taken by the investigating agencies to investigate the role played by the police officers involved in the 17 killings. The third section examines the role played by the Judicial Magistrates when the chargesheets/final reports were placed before them by the investigating agency after the completion of the investigation.

3.1. Registration of FIRs

An FIR is the first information recorded of the commission of a criminal offence. It is the beginning of any criminal investigation,[79] and the police must register it, invoking the relevant provisions of the law and naming the accused persons.[80]

The PUCL guidelines issued by the Supreme Court, the NHRC guidelines and judgments

of the Supreme Court and High Courts,[81] all require an FIR to be registered in every case of extrajudicial killing. Further, as mentioned above, the claim of the police firing in self-defence cannot be used as a reason to not register an FIR for murder against the police team.

3.1.1. No FIRs registered against the Police Team

Of the 17 cases of extrajudicial killings that have been analysed, no FIR has been registered in any of the cases against the police team that was involved in the incident. This repeated violation of PUCL guidelines has the following implications:

- ≈ This marks the beginning of a clean chit given to the police, as the version of the police is considered the absolute truth. In several cases in UP, the police's claim of self-defence is accepted merely because they have claimed it, without subjecting them to an investigation followed by a cross-examination and a trial.
- ≈ The real significance of this violation, however, lies in the way this breach lays the foundation for the loss of evidence through the destruction and manipulation of records. The absence of an FIR against the police immediately after the occurrence of the incident, allows the police to create a version of the event, and for this version to go unchallenged. The police officers remain in service, they continue to be in positions where they can tamper with evidence and influence or intimidate any public witnesses.
- ≈ The Supreme Court and NHRC guidelines require that the investigation be conducted by police officers who are not from the same Police Station and lay down certain parameters for conduct of an independent investigation. However, this investigation into the role of the police team is not set in motion in the absence of an FIR against them.
- ≈ The non-registration of an FIR against the police, pushes the family of the victim outside the system, unable to access any information or documents. It takes away their right to witness protection or compensation from the state.

3.1.2. All FIRs registered against the deceased victims

Instead, all the FIRs, in the 17 cases analysed, have been registered against the deceased victims under section 307 IPC. These FIRs allege attempt to murder and other IPC offences against the deceased victims. A total of 45 FIRs have been registered against the

deceased victims and their alleged accomplices in these 17 cases. None have been registered against the police team involved in the operation. (See **Annexure 5** for a table containing details of FIRs filed by the police against the deceased, in each case).

In 2020, the Supreme Court in *G.S. Mani v. Union of India*[82] found it odd that an FIR under section 307 IPC for attempt to murder and other offences was registered against the four people killed in a police shootout in Hyderabad. The Court held that "*it is obvious that no prosecution is contemplated against dead persons who can neither be tried nor convicted.*"

As the following sections of this chapter will illustrate, biased registration of FIR that allows only the police version to exist, sets in motion an entire apparatus "within the law" that embeds the systematic subversion of accountability.

3.1.3. Overwhelming signs of a staged 'encounter': The Police Version

The contents of the 45 FIRs registered against the deceased victims contain the strongest evidence to suggest that the "shootouts" were staged by the police. The FIRs in each of the 17 cases are identical. It appears that two or three templates were used to fill in the time, date, place, and name of the accused, and they do not differ in material ways. The FIRs contain identical sequence of events: details of a spontaneous shoot-out between police officers and alleged criminals in which the police are fired upon, and then (in self-defence) fire back, leading to the death of the alleged criminals. This identical sequence of events is described below along with examples from across the FIRs registered in the 17 cases.

Similarities in FIRs

FIRs begin with a "tip-off":

In 13 of the 17 cases, the FIR claims that the police received information about a crime being committed or a tip-off or secret information about the presence of the criminal in a particular area. For instance -

FIR No. 0786/2017, registered against deceased Ikram at Police Station Kairana states -

> "समय करीब 11:05 बजे रात्री द्वारा कण्ट्रोल रूम सूचना मिली की दो बदमाशों द्वारा बलवा गेट के सामने शामली काथला रोड पर एक व्यक्ति से काले रंग की मोटर साइकिल स्प्लैंडर लूट ली है जिसकी गहनता से चेकिंग की जाए।" *(At around 11.05 PM, information was received from the control room that two miscreants had stolen a black-coloured Splendor motorcycle from a person on Shamli Kathala road in front of Balwa gate which should be checked thoroughly.)*

Similarly, FIR No. 0680/2017, registered against two deceased persons Naushad and Sarvar at Police Station Kairana states -

> "मुखबीर ख़ास ने समय करीब 03:15 am पर हाथ का इशारा करके गाडी रुकवाई तथा मुझ SHO को बताया की साहब आपके थाने का इनामी बदमाश नौशाद उर्फ़ डैनी पुत्र जमील निवासी ग्राम भूरा अपने एक अन्य साथी के साथ सुबह 04-05:00 बजे कोई संगीन वारदात करने के लिए ग्राम भूरा से कब्रिस्तान वाली मस्जिद के पास गली से गांव से निकलकर आएगा।" *(The Informant signalled and stopped the car at around 03.15 AM. He told me (SHO) that the wanted criminal of my police station, named Naushad alias Danny son Jameel resident of village Bhura along with another accomplice will come out of village Bhura from the street near the graveyard mosque around 04 – 05.00AM to commit a heinous crime.)*

Police chase the alleged criminals who fire at the police:

In 16 out of 17 cases the FIR claims that the police spot the criminals on motorcycles or cars and try to stop them. The criminals try to escape by firing at the police officials and are chased by the police. For instance -

FIR No. 797/2017, registered against deceased Furqan at Police Station Budhana states -

> "समय करीब 10 बजे रात्रि बड़ौत रोड़ की तरफ से दो मोटरसाइकलों पर पांच आदमी बड़ी तेज़ी में चौराहे आये जिन्हें हम पुलिस वालों द्वारा सतर्क होकर टोर्च की रोशनी डालते हुए रुकने का इशारा किया तो मोटरसाइकलों पर सवार बदमाशों ने पुलिस पार्टी पर दो फायर किये जिससे हम पुलिस वाले बाल बाल बचे। हम पुलिस वालों ने चौकी बयवला पर कांस्टेबल निगरानी को बदमाशों की सूचना वायरलेस पर फ्लैस करने को कहकर बदमाशों का पीछा सरकारी जीपों से करने लगे।" *(At around 10.00 PM in the night, five men on two motorcycles came to the crossroads at great speed from the side of Baraut road. We tried to alert them and signaled to stop by flashing the torch light. The miscreants, who were on motorcycles then fired two shots at the police party*

who narrowly escaped. We (policemen) asked the constable present at the Bywala outpost to flash the information of the miscreants on wireless and started chasing them in our government jeeps.)

Similarly, FIR No. 108/2018, registered against deceased Ehsaan at PS Mandi states -

"समय करीब 1:30 मिनट रात्री दिनांक 25/03/2018 को चिलकाना की तरफ से दो बदमाश तेज़ गति से आते हुए दिखाई दिए जिनका पीछा SO सरवासा द्वारा किया जा रहा था। कि सामने हम पुलिस वालों को चेकिंग करता देख कर एक दम से सकपका गए जैसे ही हम लोगों ने उनको घेर कर रोकने की कोशिश की तो पीछे बैठा बदमाश पुलिस पार्टी पर जान से मारने की नीयत से फायर कर दिया। एक दम से बदमाश मंडी परिसर चिलकाना रोड सम्राट विक्रम कॉलोनी के सामने से अंदर घुस गए। मुझ SHO द्वारा व् अन्य टीम SWAT प्रभारी मय टीम व् अभिसूचना विंग प्रभारी द्वारा अपनी टीम तथा SO सरवासा द्वारा इन बदमाशों का पीछा किया गया।" *(Around 1.30 PM on 25.03.18 two miscreants were seen coming at high speed from the Chilkana side who were being chased by SO Sarvasa. The miscreants got startled seeing us (policemen) in front of them conducting a check and as soon as we tried to encircle them, the miscreant who was sitting at the back, opened fire on the police party with the intention to kill. Suddenly, the crooks entered the market complex in front of Chilkana Road, Samrat Vikram Colony. They were chased by me (SHO), SWAT in charge along with his team, Intelligence wing in charge and his team and SO Sarvasa.)*

Vehicle loses balance and alleged criminals fire at the police:

In 16 of the 17 cases, the FIRs say that the vehicle used by the criminals loses balance, the criminals abandon their vehicle and start firing at the police teams. For instance -

FIR No. 433/2017, registered against deceased Shamshaad, at Police Station Sadar Bazaar states -

"सामने से आ रहे मोटरसाइकिल पर सवार दोनों बदमाशों को पास आने पर ललकारते हुए SWAT टीम व् अभिसूचना विंग ने रोकने का प्रयास करते हुए आत्मसमर्पण के लिए कहते हुए मोर्चा संभाल लिया मोटरसाइकिल चला रहे बदमाश ने मोटरसाइकिल एक दम मोड़ने का प्रयास किया जिससे मोटरसाइकिल फिसल कर गिर गयी गिरने से दोनों बदमाशों ने स्वयं को पुलिस से घिरा हुआ पाकर पुलिस पार्टी पर जान से मारने की नियत से ताबड़तोड़ फायरिंग शुरू कर दी।" *(On seeing the two criminals approaching on a motorcycle, both the SWAT and Intelligence Wing teams took charge and called out the criminals and asked them to stop in a bid to make them surrender. The criminal driving the motorcycle tried to turn the vehicle at*

once due to which it slipped. After falling, both the criminals found themselves surrounded by the police and started firing at the police party with the intention of killing them.)

Similarly, FIR No. 422/2017, registered against deceased Ramzani, at Police Station Akbarabad states -

"नानऊ पुल की तरफ से एक गाड़ी की लाइटें जलती हुयी बड़ी तेज़ी से आती दिखाई दी पुलिस की गाड़ी को सामने आता देखकर सामने वाली गाड़ी नानऊ पुल के करीब ३५० मीटर आगे हड़बड़ाहट में खाईं के किनारे चढ़कर रुकी और उसमे बैठे तीन व्यक्ति नीचे उतरकर मिटटी की ढांग से रास्ते से निकलकर अँधेरे में छुप गये। क्षेत्राधिकारी बरला व् SI श्री अरविंद कुमार के द्वारा हमराहियों के साथ खेत में बनी समाधी की आड़ लेकर बुलंद आवाज़ से झाड़ियों में छिपे बदमाशों को ललकारा तो बदमाशों ने अपने को घिरा देखकर पुलिस पार्टियों पर जान से मारने की नियत से घूम घूमकर फायरिंग शुरू कर दी।" *(From the side of the Nanau bridge, the lights of a car were seen coming very fast. On seeing the police car approaching it, the car in front stopped about 350 meters ahead of the Nanau bridge on the side of the ditch. In a state of panic, the three persons sitting inside climbed down the mud slide and escaped into darkness. Taking refuge in a tomb built in the field, SO Barla and SI Shri Arvind Kumar, challenged the criminals hiding in the bushes in a loud voice. On seeing themselves surrounded on all sides, the criminals started firing on the police with the intention of killing them.)*

Police fire at the alleged criminals in self-defence:

In all the 17 FIRs, the police fire in self-defence in response to incessant firing by the alleged criminals. All the FIRs state that the police fired at the criminals showing "indomitable courage and bravery", using minimum force against them. For instance -

FIR No. 108/2018, registered against deceased Ehsaan at Police Station Mandi states -

"हम लोगों द्वारा आत्मसमर्पण की अपील का बदमाश पर कोई असर होता न देख मुझ SHO व् SSI श्री सुधीर उज्जवल SI सचिन शर्मा SI शाहआलम व् SWAT टीम प्रभारी निरीक्षक श्री संजय पांडेय व् सी ज़र्रार हुसैन कांस्टेबल प्रभात कांस्टेबल शहरून द्वारा बदमाश की गिरफ्तारी हेतु अदम्य साहस एवं शौर्य का परिचय देते हुए अपनी जान की परवाह न करते हुए सिखलाये हुए तरीके से बदमाश के फायरिंग रेंज में घुस कर पुनः आत्मसमअर्पण हेत ललकारते हुए आत्मसमर्पण करने हेतु कहा गया। जिस पर बदमाश द्वारा जान से मारने की नियत से हम पुलिस वालों पर ताबड़तोड़ फायरिंग शुरू कर दी। जिसमें बदमाश द्वारा चलायी गयी गोली से SI सचिन शर्मा घायल हो गए तथा गोली उनको पेट में दाहिनी तरफ लगी जिस पर हम लोगों ने अपने हाथों में लिए

सरकारी असलाह से संयमित एवं संतुलित फायरिंग की गयी" *(Seeing that the appeal of surrender by the police was having no effect on the criminals, I (SHO) and SSI Mr. Sudhir Ujjwal, SI Sachin Sharma, SI Shah Alam and SWAT team in-charge Inspector Mr. Sanjay Pandey and C Zarrar Hussain, constable Prabhat, and constable Shahroon, in a display of indomitable courage and bravery, showing no concern for our own safety, and as per our training, entered the firing range of the criminals and called them out to surrender. The criminals started firing at us with an intention to kill. SI Sachin Sharma got injured after a bullet fired by the criminals hit him on the right side of his stomach. We then retaliated by firing at the criminals in a restrained manner, using the official weapons in our hand.)*

Similarly, FIR No. 0786/2017, registered against deceased Ikram at Police Station Kairana states -

"फायरिंग कर रहे दोनों बदमाशों को मैंने व् SHO कोतवाली द्वारा बुलंद आवाज़ में ललकारते हुए कहा कि तुम लोग पुलिस के घेरे में हो स्वयं को हवाले कर दो तो बदमाशों ने हमारी एक नहीं सुनी और हम लोगों को लक्ष्य बना कर फायर करते रहे। गिरफ्तारी का कोई अन्य चारा न देख मुझ थाना अध्यक्ष द्वारा बदमाशों पर जवाबी न्यूनतम आत्मरक्षार्थ फायर करने हेतु निर्देश दिया गया तथा मुझ थाना अध्यक्ष द्वारा भी अपनी जान की परवाह न करते हुए बदमाशों की फायरिंग रेंज में घुस कर अदम्य सहस एवं शौर्य का परिचय देते हुए अपनी सरकारी पिस्टल से बदमाशों पर आत्मरक्षार्थ फायर किया गया।" *(I and the SHO Kotwali, called out to both the criminals who were firing to surrender themselves as they were surrounded by the police. The criminals did not listen to us and kept firing at us. Finding no other possible way to arrest the criminals, I, Station in charge, instructed (the team) to retaliate in self-defence with minimum firing and I, without caring for my life, and in a display of indomitable courage and bravery entered the firing range of the criminals and fired in self-defence using my official pistol.)*

One alleged criminal gets injured due to police firing, the other manages to escape:

All the 17 FIRs state that while one criminal gets injured due to police firing, the other accomplices manage to escape. Further, each of the accomplices who escape, leave behind their vehicles in all cases, and their weapons in many cases. For instance -

FIR No. 797/2017, registered against deceased Furqan at Police Station Budhana states -

> "बाकि बचे तीन बदमाशों में से दो बदमाश भी ईखों का व् अँधेरे का लाभ उठाकर मौके से फरार हो गए नजदीक जा कर देखा तो एक अवस्था में पड़ा है। मौके पर सर्च लाइटों की रोशनी में घटनास्थल व् आस पास के स्थानों की छान बीन की गई तो एक मोटरसाइकिल काली सुपर स्प्लेंडर NO DL5 SAK 6982 बरामद हुयी तथा मोटरसाइकिल के पास एक बैग मिला जिसको खोल कर चेक किया तो एक तमंचा 315 बोर , एक चाकू बरामद हुए। जिस स्थान पर फ़ुरक़ान घायल अवस्था में पड़ा था वहा से एक पिस्टल .32 बोर मिली। मौके से फरार बदमाशों की तलाश में मौके पर मौजूद पुलिस द्वारा कॉम्बिंग की जा रही है।" *(Out of the remaining three criminals, two of them also escaped from the spot by taking advantage of the darkness and the sugarcane fields. On looking closer, one of the criminals was found in an injured state. With the help of a search light when the crime scene and nearby areas were searched, a black coloured Super Splendor NO DL5 SAK 6982 was found along with a bag that contained a .315 bore pistol and a knife. A .32 bore pistol was found near where Furqan was lying injured. The police team is conducting a combing operation in search of the criminals who fled the crime scene.)*

Similarly, FIR No. 433/2017, registered against deceased Shamshaad, at Police Station Sadar Bazaar states -

> "पुलिस पार्टी द्वारा की गयी फायरिंग से एक बदमाश गोली लगने से घायल होकर पानी की टंकी के पास गिर गया जिस पर उसका साथी पुलिस पार्टी पर फायरिंग करते हुए रेलवे लाइन की तरफ भागा जिसका पीछा SO नानौता और उनके फोर्स ने किया। ज़मीन पर गिरे बदमाश के दाहिने हाथ के पास एक ज़रब पिस्टल 32 बोर बरामद हुआ तथा पास ही भागे बदमाश द्वारा छोड़ा गया एक अदद पिस्टल 9 MM बरामद हुयी पास ही एक मोटरसाइकिल हीरो हौंडा स्प्लेंडर काला रंग बिना नंबर जिसका चेसिस नंबर व् इंजिन नंबर लिखा है बरामद हुयी। भागने वाले बदमाश का पीछा करने वाली टीम के हाथ बदमाश न आने पर टीम के वापस आने पर सभी कुशलता पूछते हुए। " *(Due to the firing by the police party, one criminal got injured and fell near the water tank and his accomplice, while firing at the police party, ran towards the railway line and was chased by SO Nanauta and his force. A .32 bore pistol was found near the right hand of the injured criminal and a 9mm pistol belonging to the escaped miscreant was recovered nearby. A black coloured Hero Honda Splendor motorcycle without a number plate but whose chassis number and engine number were written, was also recovered nearby. The criminal who fled away could not be caught by the police team and upon their return their well-being was inquired about.)*

No public witnesses to the incident:

Another recurring element, in 16 of the 17 FIRs is the absence of any witnesses whatsoever to the purported shootout. The police have repeatedly claimed that they could not find any public eyewitnesses since the incident took place at night or early morning. For instance -

FIR No. 489/2017, registered against deceased Mansoor, at Police Station Sadar Bazaar states -

> "जनता गवाह फ़राहम करने का प्रयास किया गया लेकिन रात्री का नावक़्त होने के कारण जनता का कोई गवाह फ़रहाम नहीं हो सके" *(An attempt was made to produce public witnesses but it being late in the night, no witnesses could be produced.)*

Similarly, FIR No. 0786/2017, registered against deceased Ikram at Police Station Kairana states -

> "दौराने गिरफ्तारी व् बरामदगी जनता के गवाहन फराहन करने कि कोशिश की किन्तु जंगल व् नावक़्त होने के कारण कोई जनता का गवाहन फराहन नहीं हो सका।" *(During the arrest and recovery, I tried to get the public witnesses, but since it was late in the night and a jungle, no public witness could be found.)*

An analysis of the FIRs discloses common elements that benefit the police and support the closing of these cases later. They also allow a mechanical compliance with the guidelines.

- ≈ All the FIRs state that the police made efforts to apprehend the criminals. But the criminals attacked the police team, due to which the police were compelled to retaliate in self-defence. These details serve a dual purpose - first to show that the force causing death is justified in self-defence, and second, to bring the shootout within the scope of Section 46, CrPC.[83] Section 46 of the CrPC permits the use of force, up till the causing of death, while trying to arrest an accused.
- ≈ Furthermore, this standard police narrative allows the police version to comply with existing legal framework - that force was used only after issuing a warning, that force was necessitated in self-defence, that minimum force was used, that official weapons were used, that force was used on orders of the SHO/Senior

police officers present, and therefore that this police action was legal and within the course of their duty.

≈ The accomplice who survives and escapes the police shootout also serves multiple purposes. It allows the police to keep an FIR alive against an "unknown accused", it allows them to claim that the force used was not "excessive" (as the other alleged criminals managed to get away). It also creates public fear that criminals are running free in UP, thus further justifying their own actions.

3.1.4. Multiple FIRs registered for every police killing

UP police have registered multiple FIRs for a single incident of extrajudicial killing. In many of the 17 cases, the police have registered three FIRs. A first FIR is registered against the deceased victim and the "unknown escapee" on charges of attempted murder (Section 307 IPC) of the police officials and other IPC offences. A second FIR is registered against the same people for carrying unregistered arms/guns under the provisions of the Arms Act, 1959. Many times, a third FIR is registered for concealment of stolen property, or theft, or another crime that the deceased victim and the unknown escapee are said to have committed prior to the police shootout. The contents of each of the FIRs registered in any single case are identical. It is therefore not clear why multiple FIRs have been registered for the same incident.

The law says that one FIR is to be registered for each incident. Other than a few exceptions,[84] there is an explicit bar on registration of a second FIR for the same offence.[85] A second FIR is permitted *only* if the different FIRs are with respect to counterclaims or different versions of the same incident, and if the FIRs are against different accused. For instance, after an extrajudicial killing, one FIR may be registered against the police team under Section 302 IPC for committing murder, and at the same time, the police team may register an FIR for attempt to murder, under Section 307 IPC, against the deceased victims, for attacking the police and causing them to retaliate in self-defence leading to death. Therefore, the registration of multiple FIRs for a single incident is not consistent with the applicable legal standards.

3.2. Investigation Conducted by the Police

The Supreme Court has repeatedly recognized fair investigations to be an intrinsic element of fair trial under Article 20 read with Article 21 of the Constitution. The PUCL and NHRC guidelines stipulate that an independent investigation must be conducted in all cases of police killings. Only an independent and unbiased investigation into the incident can shed light on what really happened, and the role played by the police. The section below evaluates the investigation carried out in the 17 cases under study in light of the NHRC and PUCL guidelines. (See **Annexure 6** for a detailed table on the violation of the PUCL guidelines in the investigation conducted in eight cases.)

PUCL Guidelines on Investigation

The Supreme Court in the PUCL case laid down the following guideline for the investigation of a case of death caused during police firing:

"An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter). The team conducting inquiry/investigation shall, at a minimum, seek:

a. *To identify the victim; colour photographs of the victim should be taken;*

b. *To recover and preserve evidentiary material, including bloodstained earth, hair, fibers and threads, etc., related to the death;*

c. *To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statements (including the statements of police personnel involved) concerning the death;*

d. *To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;*

e. *It must be ensured that intact fingerprints of deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;*

f. *Post-mortem must be conducted by two doctors in the District Hospital,*

one of them, as far as possible, should be In-charge/Head of the District Hospital. Post-mortem shall be video-graphed and preserved;

g. *Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed.*

h. *The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide."*

Clauses (a) to (h) mentioned above make it clear that the Court intended that the investigating team should begin the investigation without any delay, by visiting the scene of crime and securing evidentiary material related to the death.

3.2.1. Initial Investigation carried out by Officers from involved Police Station

The investigation was not carried out by the State CID or any other independent investigating agency in any of the cases analysed in this report. Further, in violation of the NHRC / PUCL guidelines, in a majority of cases, the initial investigation was conducted by a police officer from the same police station. Furthermore, in most cases, the investigating police officer was of the same rank as the police team which was involved in the killing. The investigation was later transferred to another Police Station, to show compliance with PUCL guidelines, although the breach of the guidelines had already occurred. The initial hours just after the incident is the most important period for the investigation. If the collection and securing of evidence from the scene of crime is carried out by the police from the involved Police Station, and not from an independent investigating team, it would severely compromise the chances of an effective investigation. The following illustrations from the cases analysed demonstrate the inadequacies in the investigations carried out:

In the case of **Qasim:** Officers of the SWAT team (headed by SI Harvendra Mishra), Mathura, officers of Police Station Shergarh (headed by SHO Praveen Kumar), Mathura and a constable from Police Station Barsana, were involved in the police firing which caused Qasim's death on 02.08.17. The investigation was initially conducted by SI Satish Kumar, Police Station Shergarh and it was then

transferred to Inspector Raghuraj Bhati, Crime Branch, Mathura on 04.08.17.

In the case of **Waseem**: A police team headed by Deputy Superintendent of Police (DSP) Brijesh Singh, Special Task Force, Field Unit, Meerut and police officers of Police Station Saroorpur, were involved in the police firing on 28.09.17. The initial investigation was conducted by SI Ghanshaym Singh of Police Station Saroorpur, Meerut and later on it was transferred to DSP Vijay Prakash Singh, Circle officer (Transport), Meerut on 07.11.17. The investigation was then transferred to Rajesh Kumar, SP, Meerut on 29.11.17.

In the case of **Shamim:** A team of police officers from Police Station Jansath, Muzaffarnagar, SWAT, Muzaffarnagar and Special Cell, Delhi were involved in the police firing on 31.12.17. The initial investigation into the FIRs was conducted by SI Jawahar Singh, Police Station Jansath, Muzaffarnagar. This was later transferred to Inspector Vikram Singh, Crime Branch, Muzaffarnagar on the direction of senior officers.

The Supreme Court has held that any investigation into a criminal offence must be free from infirmities, or else it would be legitimate to assume that the investigation was unfair and carried out with an ulterior motive. It has further held that the investigating officer should be fair and conscious to rule out any possibility of fabrication of evidence. Furthermore, his impartial conduct must dispel any suspicion as to the genuineness of the investigation. The collection of evidence by an investigating officer from the same police station as that of the police team which participated in the killing, is not only inconsistent with the NHRC and PUCL guidelines, but also raises grave suspicions on the integrity and reliability of the evidence collected. It gives rise to the apprehension of fabrication or destruction of evidence. It is highly probable that officers from the same Police Station may want to protect their immediate colleagues from being prosecuted for murder.

3.2.2. Substandard and Biased Investigation

In all the cases studied in the report, the investigations conducted by the 'independent' investigating team of a different police station were inadequate as well. In all the cases, the investigating team from a different station confirmed what was in the FIR - that the

deceased was the accused and the police officers, the victims. This conclusion of effectively upholding the police claim runs through each stage of the investigation and is reflected in the collection and analysis of documents; the line of questioning of witnesses; the tone and tenor of the Closure Reports; and statements of the investigating team to the NHRC. No investigation was conducted on the role played by the police and whether the use of force was necessary and proportionate. The plea of self-defence taken by the police team in the FIR is accepted by the investigating team without question. The blatant violations of law, as well as inherent factual inconsistencies and contradictions which raise significant questions on the police version, were overlooked.

These factual inconsistencies and contradictions in the police version have been detailed in the section below.

3.3. Cases Aborted: Non-Application of Mind by the Magistrates in Closing the Proceedings

In law, once an investigation is complete, the police file a Final Report. This may either be a chargesheet (if the police conclude that an offence appears to have been committed) against the accused, or a Closure Report[87] (if the police conclude that either no offence appears to have been committed or the police could not identify the accused who committed the crime) closing the case. Where a Closure Report is filed by the police, the Judicial Magistrate can do any of the following -

(*1*) he may accept the report and close the proceeding;

(*2*) he may disagree with the report, taking the view that there is sufficient material to proceed with trial and proceeds to hear the case; or

(*3*) he may direct further investigation to be made by the police under Section 156 (3).[88]

This oversight by a court during the pre-charging stage is intended to ensure the rigor of the investigation. Courts have an obligation to ensure that the investigating agency is acting impartially and lawfully. This stage is the first opportunity for a trained judicial

mind to critically appraise the material produced by the investigating agency. The role of a criminal court of first instance is even more critical in matters of state excesses, such as extrajudicial killings, as there are a lot of incentives for collusion between the investigating agency and the accused police officials. If the investigating agency is not discharging its functions fairly, it is the duty of the court to order further investigation to discover the truth and prevent a miscarriage of justice. A court should act to prevent an unjust and faulty investigation.[89]

The powers of investigation lie solely with the investigating agency, and a Court cannot direct the particulars of investigation. However, a Judicial Magistrate has the power to accept or reject the Report filed by the police after the completion of the investigation. The Supreme Court recognizes this power of the Judicial Magistrate as being wide enough to ensure a fair investigation. This includes the power to supervise all proceedings conducted by police officers for collection of evidence and to order further investigation if need be. Recently, the Supreme Court in *Vinubhai Haribhai Malaviya v. State of Gujarat,*[90] detailed the powers of the Magistrate to ensure that a proper investigation takes place and stated that the Magistrate is the foremost judicial authority that must be satisfied that a proper investigation by the police has taken place. The Court held:

> *"To ensure that a "proper investigation" takes place in the sense of a fair and just investigation by the police—which such Magistrate is to supervise—Article 21 of the Constitution of India mandates that all powers necessary, which may also be incidental or implied, are available to the Magistrate to ensure a proper investigation which, without doubt, would include the ordering of further investigation after a report is received by him under Section 173(2); and which power would continue to ensure in such Magistrate at all stages of the criminal proceedings until the trial itself commences."*

3.3.1. Filing of Closure Reports by the Police across 17 Cases: An Overall Comment

In 16 out of the 17 cases analysed, the investigating officer filed Closure Reports before the Judicial Magistrates. In 11 out of these 16 cases, the concerned Judicial Magistrate

accepted the Closure Report filed by the police, closing the case, without any further investigation. The status of the remaining cases could not be ascertained from the information available. Media reports however indicate that as of July 2020 in around 61 cases, closure reports had been filed by the police, to close the investigation, and this had been accepted by the courts.[91]

All the FIRs in the 17 cases were registered against the deceased, who was killed in the police firing and an unknown accomplice who, it was alleged, managed to escape. In each of the 16 cases, the Closure Report confirmed what the FIR stated. Even the factual contradictions in the police version of the events that emerge from the Post Mortem, Forensic and Ballistic Reports were overlooked by the investigating team, and a Closure Report was filed in all these cases.

The Closure Reports all state that upon investigation, the "police encounter" was found to be genuine. They further state that the deceased victims - who they have made an accused in the FIRs - are dead, and that the police could not find any information about identity of the unknown accomplice. This is given as the reason for closing the investigation. For instance:

> In the case of **Shamim:** A Closure Report was filed in FIR 840/2017 registered against Shamim and an unknown accused under Section 307 IPC. The Closure Report concluded on the basis of Post Mortem, Forensic Science Laboratory (FSL) and Ballistic Reports and the survey of the scene of crime, that the deceased criminal fired at the police party with the intention to kill them, which amounts to an offence under Section 307 IPC. It stated that since the case was filed against a deceased person and an unknown accused who could not be caught despite several efforts, a Closure Report was filed in the case. Similar reasons were given for closing FIR No. 841/2017 which was registered against Shamim under Section 25 and 27 of the Arms Act, 1959. The Closure Report stated that several weapons were recovered from the scene of crime, thereby the offences under sections 25/27 of the Arms Act are made out. However, the case was proposed to be closed since the accused was killed during the "encounter".
>
> In the case of **Waseem:** The Closure Report stated that based on oral and

documentary evidence, investigation of the scene of crime, FSL and Post Mortem Reports, and the Magisterial Inquiry, it was established that the deceased was a "dreaded criminal" who was engaged in extortion, looting and murder. Since both the accused persons in the FIR, Waseem and Sabir, died in different "encounter" incidents, the Closure Report stated that the investigation ended.

3.3.2. Right of Hearing denied to the Victim

In 11 out of 16 cases where a Closure Report was filed by the police, the concerned Judicial Magistrate unquestioningly accepted the Closure Report. In *APCLC v. State of Andhra Pradesh*, upheld by the Supreme Court in *Andhra Pradesh*[92] *Police Officer's Association v. State of A.P.*,[93] the Court noted that the Magistrate has the discretion to disregard the Closure Report submitted by the police. The Court held:

> *"That the existence of circumstances bringing a case within any of the Exceptions in the Indian Penal Code including the exercise of the right of private defense (a General Exception in Chapter IV IPC), cannot be conclusively determined during investigation. The opinion recorded by the Investigating Officer in the final report forwarded to the Magistrate (u/Sec. 173 Cr.P.C.), is only an opinion. Such opinion shall be considered by the Magistrate in the context of the record of investigation together with the material and evidence collected during the course of investigation. The Magistrate (notwithstanding an opinion of the Investigating officer, that no cognizable offence appears to have been committed; that one or more or all of the accused are not culpable; or that the investigation discloses that the death of civilian(s) in a police encounter is not culpable in view of legitimate exercise by the police of the right of private defense), shall critically examine the entirety of the evidence collected during investigation to ascertain whether the opinion of the Investigating Officer is borne out by the record of investigation. The Magistrate has the discretion to disregard the opinion and take cognizance of the offence u/Sec. 190 Cr.P.C."*

The law laid down by the Supreme Court provides that in the event Magistrate decides to accept the Closure Report filed by the police, the Magistrate must give notice to the complainant in the FIR and provide opportunity for the Complainant to be heard at the time of consideration of the Closure Report.[94] Further, the complainant/victim is also allowed to contest the Closure Report by filing a Protest Petition. This allows the

complainant to participate in the legal process and compels further scrutiny of the police version.

In the present cases, notice was never issued to the victim i.e., the family of the person killed in police firing. Because the deceased persons were named as the "accused" and the police were named as "victims" in the FIR, the Magistrates issued notice to the relevant police officer from the "encounter" team on whose statement the FIR was registered, and not to the victim's family. This police officer was technically the complainant in the FIR. In these cases, this officer sent a letter to the Magistrate stating that he had "no objection" to the Closure Reports. The Magistrate took note of this "no objection letter, accepted the Closure Report filed by the police, bringing the investigation into the death caused in police firing to an end. This is made clear in the following examples:

> In the case of **Shamim**: The Judicial Magistrate accepted the Closure Reports filed by the police on the grounds that (i) the complainant (the officer leading the police party) had no objection to the Closure Reports filed by the investigating officer, and (ii) there is no point in continuing as the FIRs were registered against a deceased person.
>
> In the case of **Waseem:** The Judicial Magistrate accepted the Closure Report filed by the police stating that (i) the complainant, DSP Brijesh Kumar, had no objection; and (ii) the court had perused case diaries and other documents, and was satisfied with the reasons provided in the Final Report.

In this way, the Court did not provide the crucial oversight it should have in any of the cases studied in this report. Instead, the determination of whether or not a case would proceed to trial depended on the opinion of the police officer involved in the killing in the first place. In the process, the victim was also not able to participate in the proceedings. The fact that this happened on the watch of a Judicial Magistrate, who is vested with the power to ensure a fair investigation in such cases, is of particular concern.

3.3.3. Circumstances of the killing not Investigated

Most alarmingly, in these cases, the Judicial Magistrates effectively approved of a procedure adopted by the police which is not sanctioned by law. The judgments of the

Supreme Court, High Court and the NHRC[95] have clarified that this procedure - of registering FIRs against the person killed in the police firing, and then closing the investigation by filing Closure Reports on the ground of death of the accused persons - is unconstitutional and inconsistent with the CrPC. In all these cases, the Judicial Magistrate overlooked the fact that the police investigating team made no attempts to investigate the circumstances under which the police team opened fire and caused death, or whether any offences were committed by them. At a minimum, the Judicial Magistrates ought to have directed further investigation on the ground that the investigations focused on the conduct of the deceased and not the police, who had caused the deaths. Thus, the Judicial Magistrates have legitimized unconstitutional and illegal actions by the police.

3.3.4. Other Illegalities Ignored by the Judicial Magistrate

Registration of FIR against the Deceased and none against the police

In all of the 11 cases analysed, the Judicial Magistrates have failed to note a repeated breach of the NHRC / PUCL guidelines - registration of an FIR against the police officers. The Judicial Magistrate did not record that such an FIR had not been registered in any of the cases, and did not question the police about this egregious violation.

Plea of Self-Defence is for Trial

The Judicial Magistrates also allowed the police to not comply with the NHRC / PUCL guidelines in other ways. They accepted that the investigation can be closed on a plea of self-defence at the stage of the investigation, without any further examination in trial. As mentioned earlier, the plea of self-defence can be *only* proved in a trial. It would be legally incorrect to close the case simply because the police officer claimed that the death was caused in self defence during a shootout, or was caused during the legitimate exercise of the police's power to arrest (as conferred by Section 46 of CrPC).

Investigation Carried Out by the Police Officer from Accused Police Station

In majority of the cases studied for this report, the Magistrate also ignored the fact that the collection and securing of evidence from the scene of crime, at least at the initial stage, was done, by police officers belonging to the same Police Station as the police party involved in the shootout. It was not done by an independent investigating agency, as mandated by the guidelines of the NHRC and the Supreme Court. This is tantamount to the complainant carrying out the investigation themselves. It violates the proposition of criminal law that the informant and the investigator must not be the same person. Justice must not only be done but must appear to be done.[96] The Judicial Magistrates have erred in overlooking this violation by the police team conducting the investigation. This goes to the root of the material presented as evidence and raises suspicions of fabrication of evidence.

3.3.5. Uncritical Acceptance of Investigation: Overlooking contradictions and Obvious Gaps in police version

Even the police version of each extrajudicial killing analysed in this report contains factual inconsistencies and contradictions. This section documents some of the violations that are *prima facie* evident from analysis of legal records in the 17 cases. This supports the argument that the Judicial Magistrates did not apply their mind to these cases, and did not examine the evidence before accepting the Closure Report filed by the police.

Post-Mortem Reports show lethal force used

The Post-Mortem Reports of the deceased victims are not consistent with the police version as contained in the FIR and later the Closure Report. The police claimed that "minimal force" was used against the deceased victims during each "encounter". The bodies of 12 of the victims show gunshot wounds on the torso, abdomen and even on the head. The bodies show multiple gunshot entries, not just one or two gunshot wounds that would be ordinarily necessary for "immobilizing" them.Police are trained (a claim reiterated by the police in their FIRs) to shoot in a targeted manner below the waist, and to incapacitate without killing, in accordance with the provisions in the Police Manuals

and prevalent policing norms.

For instance, **Ikram's** dead body shows entry and exit wounds of fivebullets on both legs and feet, and a fracturein the lower part of the right thigh and heel bone. **Shamshad's** dead body shows entry and exit of three bullets on the chest, as well as one bullet on the knee. **Mansoor's** dead body shows a gunshot wound on his upper chest. **Waseem's** dead body shows that he was shot four times - in his head above his ear, in his left shoulder, on his left wrist, and in his abdomen; there are no bullets in his lower body. **Sumit Gujjar's** body shows two bullets in his chest. **Ramzani's** body shows three bullet wounds, on his chest, on his left leg as well as a bullet entry wound at the back of his head, behind his left ear. This is significant because it means that Ramzani was probably running away from the police and not facing them, let alone attacking them, to necessitate self-defence. Similarly, **Shamim's** dead body too shows twobullets - one entry wound at the back of the head, the exit of which is above the nose, and a second bullet entering from the left temple and exiting from the right temple. **Ehsaan's** dead body shows four bullet wounds - one entry from the back, one on his upper right arm, one entering from the left side of his head, and exiting from the right side of his head, and a fourth gun shot into the side of his chest. **Furqan's** dead body shows four gunshot wounds - one through his temple, two into his chest, and one above his elbow. **Qasim's** dead body shows three gunshot wounds - on his abdomen, thigh and knee. **Noor Mohammad's** dead body shows three bullets shot through his chest and abdomen.

There is little evidence to show that the bullets were aimed at the lower part of the victims' bodies to immobilize them and ensure their arrest. Instead, from the pattern of gunshot wounds to the head, chest and abdomen, it appears that the police used lethal force with the knowledge and intention to cause death.

The dead bodies also show fractures, even on the upper body, which is again inconsistent with the police version that they merely retaliated in self-defence. These fractures, in fact, lend credence to the narrative of the victims' families: that the deceased were abducted or "picked-up" by the police prior to the "encounter" and possibly subjected to torture.

Further, Post-Mortem Reports of five deceased victims, namely - Ikram, Mansoor, Waseem, Qasim, and Noor Mohammad - show blackening and tattooing around the bullet entry wounds, indicating firing from close range. If the deceased were shot from close range, it is harder to understand why they were shot on their abdomens and not on their legs if the shooting was in self-defense. (See **Annexure 7** for a table containing details of Post Mortem Reports of the deceased victims).

Police only sustained minor injuries

In every case, the police version is that the deceased victim and his accomplice opened indiscriminate fire and shot at the police party. Interestingly, out of the approximate 280 police personnel involved in these 17 police killings, only around 20 police officers sustained injuries. Moreover, in 15 out of the 17 cases analysed, the FIR and police medical records show that the police sustained only minor injuries, like abrasions and lacerations, on their hands, feet and legs. Based on the medical records, it appears that these 18 alleged criminals used minimal force against the police.

Inadequate proof that the deceased or his accomplice were holding weapons, or fired at the Police

In seven cases - pertaining to the deaths of Kasim, Waseem, Noor Mohammad, Ehsaan, Mansoor, Furqan, and Jaan Mohammad - the record shows that the fingerprints of the deceased victims were not found on the weapons recovered by the police from the scene of crime. This means that apart from the police's oral claim, there is no evidence to show that the victims even held weapons in their hands in order to open fire at the police party.

In some cases the police have also failed to prove that the bullet injuries sustained by the police were fired from the gun of the deceased or his accomplice. Either no ballistic and forensic analysis has been conducted or, in some cases where ballistic analysis has been

conducted, it does not support the police claim.

For example:

In the case of **Noor Mohammed**: Medical records show that a police officer sustained two bullet wounds. However, the ballistic examination does not indicate that these bullets are from the recovered weapons of the deceased or his accomplice. In the same case, one bullet proof jacket shot with bullets was produced. However, there is no evidence to connect these bullets with the weapons recovered from the deceased victim or his accomplice.

In the case of **Kasim**: Two police officers sustained gunshot injuries. The police claimed the shots were fired by the victim's accomplice, Iqbal. However, no evidence was produced during the investigation connecting the bullets which injured the police officers to Iqbal's gun. The investigating team and the Judicial Magistrate appear to have accepted the oral claims of the police officers involved in the shootout without corroboration.

No proof that retaliatory firing by police in self-defence was necessary

There is an effort to present bullet proof jackets with bullets in them as proof that the police needed to fire in retaliation. As per the FIRs in 17 instances of police killings, at least 16 bullet proof jackets were claimed to be shot at by the deceased victims and their accomplices. However, there is very little effort to connect the bullets found in the bullet proof jackets with the weapons claimed to have been recovered from the deceased victim and his accomplice/s.

For example:

In the case of **Noor Mohammad**: Three police officers were hit on their bullet proof jackets. Two weapons were recovered from the crime scene - a 9 mm pistol, recovered from the right hand of Noor Mohammad and a 7.65mm pistol recovered a few steps away in a field. The police claimed this belonged to Noor's accomplice, who had escaped. The

weapons and bulletproof jackets were all sent for the FSL Examination. The FSL Report stated that the three distorted bullets found in the bullet proof jackets were fired from a 7.65mm pistol. However, there were no fingerprints analysis, or any other examination done to prove that the 7.65mm pistol belonged to the so-called accomplice who escaped.

In the case of **Waseem**: A bullet proof jacket of a police officer was sent for the FSL examination. The only conclusion drawn in the FSL report is that residue of copper and nickel has been found at the place where the bullet hit the jacket. The report has no details about the weapon used.

In the case of **Mansoor**: The SHO was hit on his bullet-proof jacket. However, the FSL Report contains no details about the bullet proof jacket. This suggests that the jacket was not sent for the FSL examination.

There is very little evidence to prove that these bullet proof jackets were even used in the purported encounter. There is nothing to show why the police requisitioned bullet proof jackets while apprehending criminals, many of whom are petty criminals accused of theft. Similarly it is unclear whether this is regular practice for police officers arresting criminals in UP. Further, there is no record of the time the bullet proof jackets were removed from the Police Station and to which officer each one was assigned.

There are other factual inconsistencies in the police investigation that were overlooked by the Judicial Magistrates. For instance, despite the repeated mention of a secret tip off as the origin of the incident, in many cases, this purported tip-off is not reflected as an entry into the General Diary or Daily Diary of the Police Station, or through a phone call or text message record on the phones of the police officials. Contemporaneous record of the tip is a mandatory legal requirement to test the veracity of the Police claim, which is often produced after the incident. An analysis of the case documents shows that in none of the cases the vehicles of the deceased are examined for signs that they had lost balance/ toppled over as claimed by the police. Furthermore, the Judicial Magistrates have not questioned the abject lack of public witnesses. The description of the shootout by the police claims that the police kept warning the alleged criminals who fired several rounds

before they were killed. If not seen, it is difficult to believe that warning calls (loud enough to reach alleged criminals on the run) and gun shots were not even heard by anyone, in the dead of the night, when there is no other ambient sound. Inversely, it has not been shown that the site of the incident was far enough from human inhabitation, for there to be such no witnesses present near the site.

Thus, an analysis of the 17 cases highlights glaring irregularities, both, in the police version of events leading to the alleged shootouts and the manner in which these cases were investigated thereafter. There is strong evidence to suggest that the shootouts were staged by the police. The integrity and reliability of the material that is presented as evidence should have been scrutinized, keeping in mind the control that the police team conducting the shootout had over it. The investigating team and the Judicial Magistrate failed to note these inconsistencies and contradictions in the police investigation. Each of these inconsistencies should have prompted the Judicial Magistrates to direct the police to conduct further investigation in the cases. However, this was not done.

Chapter 4

A FAÇADE OF INQUIRIES

A FAÇADE OF INQUIRIES

This chapter evaluates the inquiries conducted by quasi-judicial authorities, such as the Executive Magistrates and the NHRC, in these cases. These bodies are mandated to act as oversight and accountability mechanisms for extrajudicial killings. The chapter examines how the inquiries were conducted, the material examined by the Magistrates, and their approach to law and facts.

4.1. Magisterial Inquiries

Section 176 (1-A), CrPC[97] envisages an inquiry into the cause of death for every instance of death, rape, and disappearance, committed while the deceased was under police or judicial custody. This is to be conducted by a Judicial Magistrate. The Supreme Court has clarified that a person is said to be in custody, if they are "under the control" or "in the physical hold" of an officer with "coercive power".[98] Deaths during police firing in the course of arrests would fall within the ambit of custodial death. The High Court of Madras while hearing petitions on extrajudicial killings - has held that an inquiry under Section 176(1-A) CrPC by a Judicial Magistrate should be conducted in these cases.[99] This is an important part of the statutory framework to ensure accountability for extrajudicial killings.

An examination of Magisterial Inquiry Reports in eight out of 17 cases reveals several procedural and substantive breaches of applicable law and guidelines.

4.1.1. Magisterial Inquiries were Wrongly Conducted by Executive Magistrates

In all these eight cases, the inquiry was conducted by an Executive Magistrate[100] and not a Judicial Magistrate. This violates Section 176(1-A), CrPC and is linked to a misinterpretation of the law in the PUCL guidelines. The guidelines state the following:

"A Magisterial inquiry Under Section 176 of the Code must invariably be held in all cases

of death which occur in the course of police firing and a report thereof must be sent to Judicial Magistrate having jurisdiction Under Section 190 of the Code."

The Supreme Court - in referring to Section 176, CrPC instead of Section 176(1-A) - has ignored its own precedent of laying down a broad definition of custody, as mentioned earlier. The Court has also misinterpreted the scope of Section 176(1) and 176(1-A) CrPC. The CrPC was amended in 2005, after Executive Magisterial Inquiries were found to be inadequate in investigating custodial deaths.[101] The opening words of Section 176(1) CrPC - "when any person dies while in the custody of the police" - were omitted. Section 176(1-A) was inserted as an addition to the earlier Section 176 (1) of the CrPC, and the power to conduct magisterial inquiries in cases of custodial deaths, rapes and disappearances was taken away from Executive Magistrates and conferred specifically on Judicial Magistrates.[102]

In assigning magisterial inquiries to Executive Magistrates, the PUCL guidelines also ignores the fact that matters which involve judicial discernment - such as the appreciation of evidence or making a decision which exposes any person to any punishment, inquiry or trial - are to be determined exclusively by a Judicial Magistrate. Also, an Executive Magistrate (like the police cadre) is appointed by the state government. It is part of the executive, and likely to be less independent.[103]

Recently, the NHRC issued an order on"Interpretation of Section 176(1-A) of the CrPC" on 4 September 2020, where it reiterated that this inquiry must be conducted by a Judicial Magistrate.[104]

"Inquiries shall also be held by Judicial Magistrate or the Metropolitan Magistrate in addition to the inquiries or investigations held by the police within the local jurisdiction where the offence has been committed. So the inquiry is a condition precedent to determine an offence...Therefore to give more sanctity to such inquiry, the power has been given to the Judicial Magistrate/Metropolitan Magistrate by inserting new amended provision in Section 176 CrPC."

4.1.2. Flawed Outcomes as a Result of Inquiries wrongly Conducted by Executive Magistrates

Inquiries under Section 176 (1) of the Code by Executive Magistrates are confined to the cause of death. Executive Magistrates do not have the power to give findings on other disputed facts. The language used in Section 176(1-A) of the Code, indicates that the inquiry by a Judicial Magistrate has a wider scope to ascertain the cause of death,and includes the relevant surrounding circumstances, to determine the culpability of the perpetrators.[105] The NHRC guidelines provide a checklist of facts to be examined while conducting an inquiry into an extrajudicial killing under Section 176(1-A) CrPC. It requires that a Magisterial Inquiry should cover – (i) the circumstances of death, (ii) the manner and sequence of incidents leading to death, (iii) the cause of death, (iv) any person found responsible for the death or suspicion of foul play that emerges during the inquiry, (v) act of commission or omission on the part of the public servants that contributed to the death, and (vi) adequacy of medical treatment provided to the deceased.[106]

Considering the role of the Judicial Magistrate and the scope of an Inquiry under Section 176(1-A) of the CrPC, the High Court of erstwhile Andhra Pradesh held:

"A Magisterial inquiry into the facts and circumstances of death, does not obviate the rigour of investigation and trial".[107] Thus, the Magisterial Inquiry is not meant to substitute investigation. The provision makes it clear that such inquiries shall be held "*in addition to the inquiry or investigation held by the police".*

In all the eight cases that were examined, the Executive Magistrates who conducted the inquiries acted without jurisdiction in holding the police killing to be "genuine". The Executive Magistrates gave findings on questions they were not empowered to look into. For instance, the Magisterial Inquiry Reports analyzed for this Report conclude the following:

"...on the basis of analysis of documents listed and evidence presented, there is nothing

on record to show that the 'encounter'(muthbhed) in question is fake."

Presented below are excerpts from the Magisterial Inquiry Reports into the cause of death of Mansoor, Furqan, Wasim and Noor Mohammad which serve as examples of wrongly conducted inquiries by the Executive Magistrates:

The Magisterial Inquiry Report of Additional District Magistrate (Sadar), Meerut in **Mansoor**'s case states -

> "अतः उपरोक्त विवेचना के आधार पर मैं इस निष्कर्ष पर पहुंचा हूँ कि पल्लवपुर थाना में वेगनआर लूट कर भागे तीन बदमाशों को रोकने पर बदमाशों के द्वारा पुलिस पार्टी पर जान माल के नुकसान की नियत से की गयी फायरिंग एवम मौके पर मौजूद पुलिस पार्टी द्वारा की गयी ज़वाबी फायरिंग में श्री मंसूर उर्फ़ मच्छु उर्फ़ पहलवान पुत्र श्री अकबर निवासी पठानपुरा थाना बेहट जिला सहारनपुर के घायल होने व् अस्पताल में उपचार के दौरान हुयी मृत्यु की जांच में प्रस्तुत अभिलेखीय साक्ष्यों, बयानों के सम्यक परीक्षण एवं अवलोकन तथ निरीक्षण घटनास्थल से ऐसा कोई तथ्य संज्ञान में नहीं आया जिस से प्रश्नगत पुलिस मुठभेड़ असत्य तथा फ़र्ज़ी प्रतीत होती हो।" *(Therefore, on the basis of the above analysis, I have come to the conclusion that the three criminals who had fled after robbing the Wagon R in Pallavapur police station, on being stopped by the police, fired at the police party with the intention of causing loss of life and property. Consequently, the retaliatory firing by the police party present on the spot resulted in injuries to Mr. Mansoor alias Machchu alias Pahalwan S/o Mr. Akbar R/o Pathanpura Police Station Behat District Saharanpur and his death during treatment in the hospital. During the examination of the death, through the recorded evidence, proper examination of statements and spot inspection no such fact has come to notice which makes the police encounter in question appear to be untrue and fake.)*

The Magisterial Inquiry Report of the Sub Divisional Magistrate, Budhana, Muzaffarnagar in **Furqan**'s case states -

> "उक्त पत्रावली पर उपलब्ध सभी अभिलेखीय साक्ष्य तथा मौखिक साक्ष्यों तथा परिस्थिति जन्यसाक्ष्यों के आधार पर स्पष्ट होता है कि बदमाश फुरकान की मृत्यु उक्त घटना में उक्त पुलिस मुठभेड़ में हुयी है। फुरकान को बड़ौत से उठाकर ले जाने के मीरहसन के बयान की पुष्टि किसी भी साक्ष्य से नहीं होती है और न ही उसने या अन्य व्यक्तियों द्वारा ऐसा कोई साक्ष्य जांच के मध्य किसी के द्वारा प्रस्तुत नहीं किया गया जो कि घटना को किसी भी तरीके से संदिग्ध बताता हो।उल्लेखनीय है की मृतक बदमाश फुरकान की आपराधिक पृष्ठभूमि उसके आपराधिक इतिहास से स्पष्ट होती है। मृतक बदमाश फुरकान के विरुद्ध जनपद व जनपद के अन्य थानों में कुल 23 अभियोग पंजीकृत हैं तथा मृतक बदमाश मुकदमा संख्या 528 /17 धारा 395 भारतीय दंड विधि थाना शाहपुर के एक अभियोग में वांछित भी चल रहा था। जिस पर अंकन 50, 000 /- रुपये का इनाम भी घोषित था।

मृतक बदमाश फ़ुरक़ान वर्ष 2000 से सक्रिय अपराधी था तथा हत्या, लूट व हत्या आदि संगीन अपराधों में लिप्त था।" *(On the basis of all the evidence in the documents available and oral and circumstantial evidence, it is clear that the criminal Furqan died in the said police encounter in the said incident. The statement of Mir Hasan that Furqan was taken away from Baraut is not corroborated by any evidence, nor has he or any other person produced any evidence in the midst of the investigation which would in any way make the incident suspicious. It is noteworthy that the criminal background of the deceased criminal Furqan is clear from his criminal history. A total of 23 cases have been registered against the deceased Furqan in other police stations of the district and the deceased criminal/gangster was also wanted in case number 528/17 Police Station Shahpur under section 395 of the IPC. There was a reward of Rs 50,000/- declared on the deceased criminal. He was an active criminal since the year 2000 and was involved in heinous crimes like murder, robbery and murder.)*

The Magisterial Inquiry Report of the Sub Divisional Magistrate, Sardhana, in **Waseem's** case states –

"तदोपरांत अपराधी वसीम को चिकित्सक द्वारा मृत घोषित किया गया। विधिविज्ञानप्रयोगशाला , लखनऊ की आख्या पत्रांक 2017XBAL000818, 838, 839 दिनांक 02 -01-2018 के परिक्षण परिणाम के बिंदुसंख्या 7 में स्पष्ट रूप से किया गया है की प्रयोगशाला में प्रदर्शों (शस्त्र, कारतूस, बुलेटप्रूफ जैकेट्स, वसीम के पारचाजात कपड़े, वसीम के हाथ के लिए गए कॉटनस्वाब) के परिक्षण, वसीम की शवविच्छेदन रिपोर्ट (PMR) एवं FIR नक्शानज़री के प्रयोगशाला में अध्ययन तथा घटनास्थल निरिक्षण / पुनर्संरचना के आधार पर कथित बदमाश वसीम की मृत्यु पुलिस मुठभेड़ में आत्मरक्षार्थ CLOSE RANGE के बाहर की दूरी से फायर के कारित होना संभव होता है। अतः पुलिस पार्टी में शामिल अधिकारीगण / कर्मचारीगण द्वारा अपने कर्तव्यों के निर्वहन में अदम्य साहस का परिचय दिया गया है, जिसकी सराहना की जाती है।" *(Subsequently, the criminal Waseem was declared dead by the Medical Officer. In point number 7 of the test result of the Forensic Science Laboratory, Lucknow, Number-2017XBAL000818, 838, 839, dated 02 -01-2018, it has been clearly stated that the examination of the exhibits (weapons, cartridges, bullet proof jackets, Wasim's clothes, cotton swabs taken for Wasim's hand) and based on the study of, dead body, the Post Mortem Report, FIR and site plan, in the laboratory and spot inspection/reconstruction, it appears that the alleged miscreant Waseem died in police encounter in firing done in self-defence from a distance outside the CLOSE RANGE. Therefore, indomitable courage has been shown by the officers involved in the police party in the discharge of their duties, which is appreciated.)*

The Magisterial Inquiry Report of the Additional District Magistrate (Brahmapuri), Meerut in **Noor Mohammad's** case states -

> "पुलिस पार्टी द्वारा अपनी जान की परवाह न करते हुए, अदम्य साहस का परिचय देते हुए, अपने कर्तव्यों का निर्वाहन करते हुए अपराधी को आत्मसमर्पण का अवसर प्रदान करने के बावजूद अपराधी द्वारा आत्मसमर्पण न कर के पुलिस पार्टी पर फायरिंग कर दी गयी तथा पुलिस पार्टी द्वारा आत्मरक्षार्थ की गयी फायरिंग से और श्री नूर मोहम्मद उर्फ़ हसीन मोटा घायल हो गया जिसको प्रभारी निरीक्षक थाना परतापुर की सहायता से मेडिकल कॉलेज, मेरठ में भर्ती कराया गया, जहाँ चिकित्सकों द्वारा उसे मृत घोषित किया गया। उक्त सभी तथ्यों के दृष्टिगत कथित बदमाश की मृत्यु पुलिस मुठभेड़ में आत्मरक्षार्थ close range के बहार की दूरी से फायर के कारित होना संभव है। अतः पुलिस पार्टी में शामिल पुलिस कर्मियों द्वारा अपने कर्तव्यों के निर्वहन में अदम्य साहस का परिचय दिया गया है, जिसकी सराहना की जाती है।" *(The police party, while showing indomitable courage, not caring for their life, while performing their duties and despite giving an opportunity to the criminal to surrender, the criminal did not and opened fire on the police party. Due to retaliatory firing in self-defence by the police party, the criminal Noor Mohammad alias Haseen Mota was injured, who was admitted to the Medical College, Meerut with the help of Inspector-in-Charge Police Station Partapur, where he was declared dead by the doctors. In view of all the above facts, it appears that the death of the alleged criminal is due to firing in self-defence from a distance outside the close range, in a police encounter. Therefore, indomitable courage has been shown by the police personnel involved in the police operation in the discharge of their duties, which is appreciated.)*

4.1.3.Scientific Evidence was not Examined in the Magisterial Inquiry

The NHRC guidelines[108] state that a Magisterial Inquiry must examine scientific evidence such as the Viscera Analysis Report, Histopathological Examination Report, Ballistic Examination Reports of weapon and cartridges alleged to be used in the incident by the deceased, forensic examination report of hand wash of the deceased, finger print expert report on fingerprint impressions available on weapon alleged to have been used by the deceased, etc. This is in addition to the MLC Report, F.I.R, General Diary (GD) entries, and any other relevant police records.

Six out of the eight Magisterial Inquiry Reports analyzed, pertaining to the deaths of Qasim, Jaan Mohammad, Noor Mohammad, Shamim, Mansoor and Furqan, are completely silent on the issue of scientific evidence. The reports do not mention any

forensic or ballistic analysis, which is a major gap in an incident where firearms were used. Moreover, the reports do not acknowledge, explain or question the absence of such crucial pieces of evidence. And even though the Executive Magistrates have held these six deaths to be 'genuine' police shootouts, in the absence of any forensic or ballistic analysis, the police have not shown that the deceased even fired at the police. In these cases, the plea of self-defence by the police was accepted by the Executive Magistrates without any proof. The conclusion of the Reports merely reiterates the police version of what happened.

In these eight Magisterial Inquiries, none of the weapons purportedly used by the police team to kill the victim were examined. The reports do not refer to the firearm log books, the forensic analysis of the guns, or the Ballistic Reports, which could have determined whether the bullets recovered from the bodies matched the weapons used by the police. There is also minimal reliance on independent records - such as Call Data Records and Cell Tower Locations of the police team - which were not summoned or examined.

The records pertaining to weapons, and forensic and ballistic reports are essential to explain the circumstances of the shooting. For instance, each police person is assigned a specific weapon and set of bullets. It would be easy to find the weapon and number of bullets used to kill the victim, the number of bullets remaining in the weapon would then need to be examined to see if this was consistent with the police narrative. The number of bullets used by the police, the placement/formation of the police party, the direction of the bullets, etc., also need to be examined to verify the police's version of events. Similarly, the log books should be examined to ascertain whether bullet proof jackets were in fact taken when the police said they left the police station.

4.1.4. Perfunctory Measures Taken to Record Statements of Family Members

NHRC guidelines require that the *"enquiry magistrate should ensure that the information reaches all concerned particularly the close relatives of the victim. A free and fair opportunity should be given to the relatives of the victim while recording their*

statements."[109]

All eight Magisterial Inquiry Reports show that very limited efforts were made to record the statements of the family members of those killed. In the case of Waseem and Mansoor, the statements of their family members were not recorded at all.

Some reports noted that they published a notice in the newspaper or posted a notice in a public place, asking witnesses to appear before the Magistrate, but no family members came. To show compliance, each inquiry report lists out newspapers in which such notices were published. However, the reports do not mention any specific measures taken by the Magistrate to reach out to the victims' families. For instance,

In the Inquiry Report of **Waseem,** no family member's statement was recorded, and there is nothing to show that his family was contacted to request their appearance.

NHRC guidelines require that the victim's family's statements should be recorded, and their versions be "thoroughly investigated for its veracity or otherwise".[110] Where these statements of family members have been recorded, the magistrates have declared them to be "unreliable" for lack of evidence. Nothing is said about how a non-legally trained person, who has lost their son or husband, is supposed to produce evidence. For instance,

Mir Hasan, the father of **Furqan** spoke about how the police came to their home and abducted his son in front of him. The report brushes this statement aside because there is no evidence to support it. The Magistrate did not explain why the witness would concoct such an allegation. Instead, he held the police shootout to be "genuine" on the basis of documents submitted by the police and statements of the police, without examining any ballistic or forensic evidence.

In the case of **Qasim,** the Executive Magistrate disregarded the statement of Qasim's mother. She said that she was an eyewitness to the police killing, stating that the police entered their house and killed Qasim on their neighbour's roof. Instead, the statements of

Qasim's wife, his brothers, father-in-law, and nephew - who supported the police version - were included in the report. These statements raise other questions regarding their veracity. The statements of his two brothers - Shamim and Shehzaad - are identical. The statements of the brothers, Shamim and Shehzaad, and the victim's father-in-law have been recorded twice in the Report, without explanation. The Magistrate relies on the first statement of the brothers and father-in-law, which is most suitable for the police, without any reasons for why it was preferred over their second statement. Six months after the Magisterial Inquiry, Shamim wrote two letters to the NHRC in September 2018, seeking protection from police reprisal for trying to register an FIR against the police team allegedly involved in Qasim's killing.

4.1.5. Public Witnesses likely to have Witnessed the Police Shootout Not Examined

The Executive Magistrate does not appear to have visited the site of the police shootout in any of the Magisterial Reports analysed. Public witnesses, or people likely to have been present during the shootout, were not traced and examined. In fact, in two out of the eight Reports analysed - pertaining to the deaths of Ehsaan and Noor Mohammad - not a single statement of any public witness was recorded.

Even where public witnesses gave statements, none were eyewitnesses to the incident or knew the deceased. For example:

In the case of **Shamim**: The public witnesses were travelling back to their village when they saw the injured being taken to hospital.

In the case of **Jaan Mohammad**: The four public witnesses only heard noise of gun fire, and a few people talking about the "encounter".

In the case of **Waseem**: Four public witnesses had read about the killing in the local newspaper, and the other two agreed that the victim was a "dreaded criminal".

On the other hand, the Magisterial Inquiry Reports show an overwhelming reliance on

the oral statements of the police and doctors. For instance:

In the case of **Noor Mohammad**: Nine public servants (six police officers, three doctors) were examined; no public witnesses were examined.

In the case of **Ehsaan**: 23 public servants (22 police officers, one doctor) and one family member were examined.

In the case of **Waseem**: 17 public servants (16 police officers, one doctor) and six public witnesses (but no family member) were examined.

4.1.6. Reliance on the Criminal past of the Victims

The Magisterial Inquiry Reports rely on extraneous factors, like the criminal background of the victim. This serves a dual purpose – first, this implies that a person with a criminal past is likely to have attacked the police, thus lending credibility to the police version. And second, this also justifies the killing as a step towards maintaining law and order. For instance -

In the case of **Shamim:** The inquiry report by the Sub-Divisional Magistrate, Jansath, Muzaffarnagar, stated -

> "....एक आपराधिक प्रवर्ति का व्यक्ति था तथा अपराध करने में माहिर था।मृतक शमीम के विरुद्ध विभिन्न थानों पर विभिन्न धाराओं में अपराध दर्ज है तथा उस पर अंकन 1,00,000/- रुपये का इनाम भी घोषित था।जांच के दौरान ऐसा कोई तथ्य संज्ञान में नहीं आया है, जिससे उक्त मुठभेड़ का होना न पाया गया हो।अतः उपरोक्त जांच एवं पत्रावली पर उपलब्ध साक्ष्यों के आधार पर पुलिस मुठभेड़ होना तथा उस मे शमीम पुत्र फकरुद्दीन निवासी ग्राम सिसौना थाना छपार जिला मुजफ्फरनगर की मृत्यु होना पाया गया है।" *(....the deceased was a person of criminal nature and was an expert in committing crimes. FIRs were registered against the deceased Shamim under various sections at different police stations and a reward of Rs 1,00,000/- was also declared on him. During the investigation, no such fact has come to notice, which could not have been found to have happened in the said encounter. Therefore, on the basis of the above investigation and the evidence available on the file, it has been found that the police encounter took place which led to the death of Shamim S/o Fakruddin R/o village Sisauna, Police Station Chhapar, District Muzaffarnagar.)*

Similarly, in the case of **Jan Mohammad:** The inquiry report by the Sub-Divisional Magistrate, Khatoli, Muzaffarnagar, stated -

> "अतः पत्रावली पर उपलब्ध सभी अभिलेखीय साक्ष्यों तथा मौखिक साक्ष्यों तथा परिस्थिति जन्यसाक्ष्यों के आधार पर यह स्पष्ट होता है की बदमाश जान मोहम्मद उर्फ़ जानू पुत्र श्री इकबाल की मृत्यु उक्त घटना में उपरोक्त पुलिस टीम से मुठभेड़ में हुयी है। ऐसा कोई साक्ष्य जांच के मध्य किसी के द्वारा प्रस्तुत नहीं किया गया जो की घटना को किसी भी दृष्टिकोण से संदिग्ध बताता हो। उल्लेखनीय है की मृतक बदमाश की आपराधिक पृष्टभूमि उसके आपराधिक इतिहास से स्पष्ट होती है। मृतक बदमाश के विरुद्ध उत्तर प्रदेश राज्य के विभिन्न थानों में कुल 27 अभियोग पंजीकृत हैं तथा मृतक बदमाश दौराला, खतौली, फलावदा, बुढ़ाना, एवं फुगाना थानों में भी विभिन्न अभियोगों में भी वंचित चल रहा था।मृतक बदमाश जान मोहम्मद उर्फ़ जानू वर्ष 2012 से सक्रिय अपराधी था तथा लूट एवं हत्या का प्रयास आदि संगीन अपराधों में लिप्त था।अतः उपरोक्त जांच तथा पत्रावली पर उपलब्ध साक्ष्यों के आधार पर पुलिस मुठभेड़ होना तथा उसमे जान मोहम्मद उर्फ़ जानू पुत्र इक़बाल निवासी ग्राम पुट्ठीभोजान क़स्बा एवं थाना दोघट जनपद बागपत की मृत्यु होना पाया गया है।" *(Therefore, on the basis of all the evidence available from the letter and the oral and circumstantial evidence, it is clear that the criminal Jaan Mohammad alias Janu S/o Shri Iqbal died in the said incident in an encounter with the above police team. No such evidence was presented by anyone in the middle of the investigation which would suggest the incident to be suspicious from any point of view. It is noteworthy that the criminal background of the deceased criminal is evident from his criminal history. A total of 27 cases have been registered against the deceased criminal in various police stations of the state of Uttar Pradesh and the deceased criminal was also wanted under various charges in Daurala, Khatauli, Falavada, Budhana and Fugana police stations. The deceased criminal Jan Mohammad alias Janu was an active criminal since the year 2012 and was involved in serious crimes like robbery and attempt to murder. Therefore, on the basis of the above investigation and the evidence available on the file, it has been found that the police encounter took place which led to the death of Jaan Mohammad alias Janu S/o Iqbal R/o village Puthi Bhojan town and Police Station Doghat District Baghpat.)*

No distinction is made between persons who were named as accused/ are under trial in criminal cases and persons who were previously convicted in criminal cases. Some of the victims were accused of petty crimes, like theft.

4.1.7. Delays in Conducting Magisterial Inquiries

The NHRC guidelines require the Magisterial Inquiry to be completed within three

months.[111] The reports of **Ehsan**, **Mansoor** and **Qasim** were submitted almost eight months after the incident. There was a delay of three months in the case of **Noor Mohammad**. The Magisterial Inquiries in the cases of **Waseem** and **Shamim** also took longer than three months. The delay in conducting this inquiry suggests a lack of seriousness in examining time-sensitive evidence.

In these eight cases, far from ascertaining the cause of death, the inquiry reports seem to legitimize the police version. The statements of family members are explained away and not taken seriously. The reports also do not adequately scrutinize the police version.

The phenomenon of magisterial inquiries being used to give a clean chit to the police is not new, and the Supreme Court has admonished this in the past. The Supreme Court, on extrajudicial executions in Manipur[112] emphasized that the report of an Executive Magistrate cannot be a substitute for a Judicial Inquiry and held:

"*171. Insofar as holding a Magisterial Enquiry is concerned, the NHRC has stated in their affidavits that the guidelines issued from time to time are not being followed in their true spirit. That apart, the NHRC has complained that the State Governments (including perhaps the State of Manipur) invariably take more than reasonable time to submit important documents such as the port-mortem report, inquest report and the ballistic expert report as well as the Magisterial Enquiry report. Therefore, it appears that the Magisterial Enquiry is not given its due importance but in any event since it is an administrative enquiry (which is apparently conducted in a casual manner) and not a judicial enquiry, not much credence can be attached to the Magisterial Enquiry report. In this context, it may also be mentioned that the NHRC has also complained about the poor quality of the Magisterial Enquiry reports received by it and it is pointed out that in some instances the family of the person killed is not examined nor any independent witness is examined by the Magistrate. That being the position, it is not possible to attach any importance to the Magisterial Enquiry conducted at the behest of the State Government, even though it might have been conducted under Section 176 of the Cr.P.C.*

172. Therefore, we make it clear that even if the State Government decides to hold Magisterial Enquiries and take suitable action on the report given, it would not preclude any other inquiry or investigation into the allegations made. In situations of the kind that we are dealing with, there can be no substitute for a judicial inquiry or an inquiry by the NHRC or an inquiry under the Commissions of Inquiry Act, 1952." (Emphasis added)

4.2. Inquiry by the NHRC

This section documents the role of the NHRC in the 17 cases of alleged extrajudicial killings, under their investigation as Case No.10824/24/0/2018-AFE.

The NHRC (and the State Human Rights Commissions) have wide powers to ensure justice for victims of human rights violations committed by state actors. The NHRC is a quasi-judicial body constituted under the Protection of Human Rights Act, 1993. It has the power to inquire into violation of human rights. The Act gives the NHRC powers to recommend the initiation of prosecution against perpetrators, and to direct compensation to victims, of human rights violations.

The NHRC has issued specific guidelines to ensure accountability for extrajudicial killings. The guidelines contain procedures regarding reporting of offences and securing of evidence. As per the PUCL Guidelines, the NHRC is the statutory authority responsible for conducting an investigation where there is serious doubt about the investigation in cases of police killings. The guideline states: -

"The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be."

In November 2017, the NHRC had taken *suo motu* cognizance of a news item published in the Times of India under the caption, "*Criminals will be jailed or killed in encounters: CM Yogi Adityanath*"[113] and called for a report on this issue from the Government of UP.

In its order, the NHRC had observed:

"It has observed that even if the law and order situation is grave, the State cannot resort to such mechanism, which may result in the extrajudicial killings of the alleged criminals. The reported statement of the Chief Minister tantamount to giving police and other State governed forces a free hand to deal with the criminals at their will, and, possibly it may result into abuse of power by the public servants. It is not good for a civilised society to develop an atmosphere of fear, emerging out of certain policies adopted by the State, which may result into violation of their right to life and equality before law."[114]

In February 2018, the NHRC once again took *suo motu* cognizance of media reports that a 25 year old man was shot in Noida by a Sub-Inspector of UP police, who reportedly told his colleague that the "encounter" would earn him an out-of-turn promotion. In its order, the Commission again observed the following:[115]

"...it seems that the police personnel in the State of Uttar Pradesh are feeling free, misusing their power in the light of an undeclared endorsement given by the higher ups. They are using their privileges to settle scores with the people. The police force is to protect the people, these kinds of incidents would send a wrong message to the society. Creating an atmosphere of fear is not the correct way to deal with the crime."

In May 2018, two complaints were filed before the NHRC by victims' families and civil society groups, seeking an inquiry into 17 cases of alleged extrajudicial killings.[116] In its order directing an inquiry into these cases, the NHRC observed that the *"UP Police may have exceeded their jurisdiction at the time of the alleged encounter killings. It further stated that the complaints prima facie shows that there may be chances of failure on the part of the State to adhere to guidelines issued by the Supreme Court and the Commission itself".*[117]

While the NHRC inquiry was directed to be completed within four weeks, more than three years have passed since these complaints were filed. Of these 17 cases, 14 cases have

been decided so far - 12 cases were closed finding no foul play on the part of the police, and one case was transferred to the UP State Human Rights Commission. In only one case, the NHRC held that the deceased was killed in a 'fake encounter' by the police. It directed compensation to be paid to the affected family and investigation of the case by an independent agency.

Two cases are still pending, and the status of one case is not available in the public domain.[118]

During these three years, the complainants wrote at least 13 letters to the NHRC informing them how the victims' families and human rights defenders, supporting them, were being persecuted by state and non-state actors. The NHRC neither responded to, nor took on record the letters pertaining to persecution of victims' families. It directed inquiries in cases of the persecution of human rights defenders but closed those inquiries as well.

Of the 17 cases, 12 were closed by the NHRC without informing and obtaining comments from the complainants. This is a violation of the NHRC's own Practice Direction No. 17 **(Annexure 8)** which states that *"in respect of complaints received from NGOs, (i) where a decision is to be taken by the Commission for the closure of any case, comments of the concerned NGOs, in appropriate cases, may be obtained before passing the final orders."*

4.2.1. NHRC condoned violations in how these Killings were investigated

In 12 out of the 14 cases closed by the NHRC, police officers have been exonerated. The killings were held to be genuine "shootouts". This is despite the violations of the Supreme Court's guidelines, and the NHRC's own guidelines by officers investigating these cases. In one case, even when the NHRC held the death to be an extrajudicial killing, it failed to comment or hold the investigating officers responsible for serious breaches of law.

NHRC silent on how no FIRs were registered against the police

No FIRs have been registered against the police in any of the cases examined, despite what the NHRC guidelines state. The NHRC is silent on this in its final order closing the case. The records provided by the NHRC show that while they recorded the statements of the police team as well as of the investigating team, no officer was questioned on the failure to register this FIR. In 12 cases, the NHRC closed the case on the ground that no violation of human rights of the deceased was found, *"as the police acted in self-defence in exercise of the right of self-defence."*

It is seriously concerning that the NHRC did not point to this breach of its own guidelines, especially as it is inconsistent with its own previous orders in other cases of extrajudicial killings. In 1996, the NHRC passed an Order in some cases of extrajudicial killings from erstwhile Andhra Pradesh, which formed the basis for the first set of NHRC guidelines on deaths during police action in 1997. The 1996 order criticized the practice of police registering FIRs against dead persons. The Order said that a case cannot be closed merely on the police's claim that death was caused due to their retaliation in self-defence. The order noted:

"Right of private defence, if raised, has to be established. Criminal law contemplates that entitlement of protection under an exception would be available if the conditions are satisfied. It is difficult to apply the golden scale when the battle for life is on. The punishment prescribed is a lesser one than in normal situation. The right of private defence has to be raised and established at the trial and not during investigation."[119]

In the case of **Sumit Gujjar,** the NHRC has found the police officers guilty of extrajudicial killing and directed payment of compensation and an independent investigation into the incident.[120] However, even in this case, the NHRC's Order is silent about the fact that FIRs were not registered against the police officers, in breach of its own guidelines. In its Final Order on 15 March 2021, the NHRC closed the case despite being informed that the CB-CID had recommended filing final reports before court in the FIRs that were registered regarding Sumit's death.[121]

The NHRC has effectively condoned the practice of the police naming the victim as the accused, and closing the case on this ground, despite its own findings regarding the culpability of the police officers in this case.

No comment on the police team interfering with the investigation

In a majority of cases analysed for this report, the collection of evidence from the crime scene, at least at the initial stage, was not done by an independent investigating agency as mandated by the guidelines of the NHRC and the Supreme Court. Instead, this was done by an investigating officer from the same police station as the implicated police officers. The case was then transferred to another police station for further investigation, to show compliance with the guidelines. In 11 out of the 12 cases closed by the NHRC, the Commission was silent on this violation.

It was only noted in the case of **Furqan**, where this practice was pointed to by the father of the victim, in a complaint to the NHRC. In Furqan's case, the implicated police team itself seized arms and ammunition, before the arrival of the local FSL team. A disciplinary inquiry was held and the police team that breached the guidelines for securing evidence was served a notice of censure. Even here, the breach was treated as a procedural issue. The NHRC did not note how it could impact the reliability of the evidence presented, or the truth of the police's claims. [122]

NHRC silent on Police weapons not being seized

The NHRC also did not censure the police about the fact that the weapons used by the police team were not seized in many cases. The Supreme Court in its PUCL Guideline had categorically stated the following:

"(13) The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis, including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution."[123]

In the case of **Noor Mohammad**: The NHRC's spot inquiry report mentioned that the

NHRC's investigation team questioned the implicated police officers as to why the weapons used by the police party were not seized. In response, Sub Inspector Jaivir Singh, In-Charge of Crime Branch, Meerut who led the police team stated - *"It is general practice in UP that the arms and ammunition of only criminals are sent to FSL not of police."* Shockingly, the NHRC's Final Order which held that Noor Mohammad died in a genuine "police encounter", is silent on this fact and makes no mention of the statement of the Crime Branch Incharge.

In the case of **Mansoor**: On being questioned by the NHRC's Investigating Team, the implicated police officers gave different responses. Sub Inspector Naresh Kumar, Police Station Sadar Bazar stated that, "*the recovery of the weapons and bullet-proof jackets used by the police officers involved in the encounter is not a known practice in the district*". Another Investigating Officer stated that the police had a shortage of weapons in general and hence it was not practice to deposit weapons of the police party involved in the shootout for FSL examination. He also stated that if something adverse was recorded in the FSL examination, then further investigation is conducted after due permission of the Court.

4.2.2. NHRC Condoned Inquiries being carried out by an Executive Magistrate not Judicial Magistrate

The NHRC did not issue an adverse order or question the administration on why the inquiries were assigned to Executive Magistrates as opposed to Judicial Magistrates, in breach of the CrPC and PUCL and NHRC guidelines. This is even though, during the period it was hearing these cases, the NHRC passed a general order in September 2020 reiterating that this inquiry must not be conducted by Executive Magistrates.

4.2.3. Orders of the NHRC are Based on Incomplete Evidence

The NHRC failed to secure all relevant evidence for its own inquiry. It also did not comment on the fact that the investigating agency and the magisterial inquiry failed to adequately rely on all pieces of evidence. In its 9 May 2018 order, the NHRC had directed the submission of certain key documents:

"(i) FIRs registered in the case;

(ii) relevant chargesheets;

(iii) General/Daily Diary register entry of the relevant Police Station, of the day of incident;

(iv) Wireless log book record of the relevant Police Station (or district police wireless HQ, where such log is maintained) of the day of the incident;

(v) log book records of the day, of govt. vehicles used by all police officers engaged in the said encounter;

(vi) Call Detail Records (CDR) of mobile phones used by the deceased, any by all police officers engaged in the encounter (date range; one week prior to date of encounter to one week following) within six weeks."[126]

The orders and case files show that the wireless log book records of the Police Stations and the log book records of the government vehicles used by the police team were eventually not secured or considered by the NHRC in at least eight cases. In most of the cases, the NHRC recorded that the CDRs were not available due to passage of time. CDRs are preserved by the service providers only for a period of two years. In the absence of immediate instructions from the police/investigating team, they were not preserved by service providers. No stricture was passed against the Investigating team for not preserving all evidence required for the investigation.

In one case, of **Furqan** the Commission directed the DGP, UP to take departmental action against the Investigating Officer for committing lapses in the investigation. With respect to the collection of the CDRs of the police officers, the Commission noted the following:

"The I.O. failed to obtain the CDR of police personnel. He accepted the plea of the encounter team in which the encounter team has mentioned that Delhi High Court, in

case Harinder Singh Rawat v. State of Delhi Ordered that CDR of the police personnel could not be provided but this case bars the accused, not to the investigating agency."[127]

Despite this oversight by the Investigating Officer, and other factual contradictions in the case, the NHRC held that the Commission was *"unable to see any violation of human rights in this incident and satisfied that the deceased was killed in a bona fide encounter with the police team*".[128]

The NHRC and the PUCL guidelines lay down certain baseline mandatory requirements to be fulfilled during the investigation of the case. The NHRC checked whether the list of documents mentioned in the guidelines were provided. But it did not seek fact/case specific evidence, or scrutinize each piece of evidence, to test its credibility. For instance, CDRs, Cell Tower Locations, CCTV Footage, Forensic and Ballistic Examination of the weapons used by the Police team, soil samples etc., appear to have been disregarded and not requested, likely because they were not mentioned in past guidelines. This is even though these pieces of evidence are extremely crucial for investigating an extrajudicial killing.

4.2.4. Non-Application of Mind by the NHRC in Appreciation of Evidence

In 12 out of the 14 cases closed by the NHRC, the Commission exonerated the police officers implicated in the killings. It did not scrutinize the apparent gaps in the police version, which were evident from the witness statements, medical records and the analysis of scientific evidence. The decision in the only case where the NHRC found the police guilty of an extrajudicial killing was based on glaring contradictions in the police's version of events. These came to light during the Commission's own inquiry. This section below makes note of similar contradictions apparent in the other 12 cases, which were ignored by the NHRC and treated as small deviations, having no impact on the police's claims.

Extrajudicial Killing of Sumit Gujjar

In an Order issued on 28 November 2019, the NHRC noted several gaps in the police version of the shootout and held that "Sumit Gujjar was killed by the police in a fake encounter in an extra judicial manner. It is a fit case of violation of human rights of the deceased, for which the State is vicariously liable to pay monetary compensation to the Next of Kin of the deceased".129 It also directed the State Government to initiate an independent inquiry into the case. The spot inquiry (which was ordered by the NHRC after taking suo motu cognizance of the case) and complaints filed by the victim's family and civil society groups, brought out contradictions in the police's claims, some of which have been listed below:

- ≈ As per the police version, the informer should have seen the criminals at the ATS roundabout at around 19:45 hours and informed the police at 19:58 hours. However, Sumit's phone location on 03.10.2017, the day of the shootout, was found at Tilpata Kanawar Dadri from 19:42:20 to 19:42:28, around 14 kms away from where the shooting is alleged to have taken place.

- ≈ Despite the presence of about 14 police personnel, they failed to apprehend the three companions of Sumit Gujjar, who managed to escape from a complex with boundary walls and police personnel cornering the criminals from the opposite side.

- ≈ As per the police, Sub Inspector Satish Kumar had a gunshot wound on his stomach during the shootout with Sumit Gujjar on 3.10.2017. While there were holes in his shirt, there was no wound or bleeding. The injury was superficial and simple. Moreover, the doctor of Yatharat Hospital stated he had treated Sub Inspector Satish Kumar for an injury on his arm, raising more contradictions.

- ≈ After the shootout, Sub Inspector Satish, who had a scratch injury was taken the nearest hospital i.e. Yatharth Hospital around 09.15 PM Subsequently, at 10.40 PM, he was taken to a Government District Combined Hospital, Sector 30 Noida. No Medico Legal Certificate (MLC) was prepared at Yatharath Hospital. However, Sumit Gujjar, who received a bullet injury on his chest was taken to a government hospital, which was far away from Yatharath Hospital. It was reported by the police officers that Sumit died during treatment in the hospital, but the hospital prescription clearly stated that he was brought dead to the hospital.

- ≈ There are contradictions about bullet holes in the Swift car used by the "criminals" on the day of the shootout. The report of Head Foreman, U.P. Transport

Department revealed holes on the rear right-side door of the car. But photos provided to the spot enquiry and on internet did not show any bullet marks on the door of the car. Further, all the windows/glasses of the car used by the "criminals" were found to be closed at the time of inspection. This raises questions to how the "criminals" managed to fire upon the police party from inside the car without opening the windows.

≈ No fingerprints were taken from Sumit Gujjar or from the car used by the criminals apparently because a crowd had gathered at the spot of the shootout. Therefore, the scene of crime was not preserved, and scientific evidence was not collected. Moreover, despite the presence of so many people, no independent witness was found in the case.

≈ The cash reward for the victim was enhanced within 24 hours, without following the guidelines laid down by the Uttar Pradesh Police.

On the basis of these contradictions, the NHRC held that Sumit Gujjar was killed in an extrajudicial killing by the UP police.

Oblivious to the similar FIRs

The NHRC failed to comment on the stark similarity in the narration of all the FIRs in these cases. There is no remark or clarification sought on why the police have registered multiple FIRs into every incident of police killing. The contradictions in the FIRs were dealt with, merely for the purpose of bringing on record the police's improved versions with regard to the violations in the investigation and the inconsistencies in the police version.

No strictures about not recording Tip-off

In the cases of Furqan, Jan Mohammad, Qasim and Ehsan, there is no GD Entry to show that the police received any tip-off or secret information about the whereabouts of these "dreaded criminals", following which the shootout is said to have taken place. Despite this significant gap, the NHRC upheld the police version.

Inconsistencies in the police version treated as mere factual deviations

There are several contradictions in the police version of events: between the statements of the witnesses and the police, as well as between the statements of different police officers from the same team. This should have led the NHRC to draw adverse inferences against the police and witnesses making these statements. It should have raised doubts about how the shootout was described by the police. However, these contradictions were treated as mere deviations, having no impact on the police's claims. For instance:

In the case of **Ehsaan:** According to the police, they traced Ehsaan and his accomplice after they received a complaint that they had shot at and robbed someone called Nawab Singh. However, the records show that the police shootout resulting in Ehsaan's death took place on the intervening night of 24-25 March 2018, *before* Nawab Singh's complaint was filed. The complaint into the shooting and theft from Nawab Singh was filed at 6.25 AM, the morning *after* Ehsaan's death. This indicates the possibility that the police carried out an extrajudicial killing, and later created circumstances to support their version. While the Magisterial Inquiry completely overlooked this contradiction, the NHRC Investigation Team recognized the irregularity but concluded that "there have been few procedural deviations which do not have any bearing on the conclusion of the inquiry." The NHRC closure order is completely silent on this issue. There were other contradictions in this case as well, which further weaken the police's claims. The Senior Superintendent of Police, the senior most police officer of a district, claimed that Ehsaan and another person were on a motorcycle when they fired at Nawab Singh. However, a statement from Nawab Singh, claims they were not on a motorcycle. None of these aspects were mentioned in the NHRC closure order.[130]

In **Waseem**'s case: The written statements prepared and submitted during the Magisterial Inquiry describe the shootout. However, the police officers' oral statements to the NHRC are not consistent with this description. In their written statement, the police claim that Waseem shot at them while riding a bike, and that they shot back at him while he was still on the bike. In their oral statements, however, they claim that the police tried

to restrain Waseem. Following this, the bike that Waseem and his accomplice were on skidded and stopped. Waseem then began firing while his accomplice escaped. Further, the Deputy Superintendent of Police, who was part of the police team involved in the shootout, told the NHRC that there were no public witnesses to the shootout since it took place in a forest area. However, the NHRC Investigation Team recorded the statement of one Kunwar Pal Singh who heard gun fire and reached the location of firing along with other people. While the shootout had already taken place when they reached, they saw the injured deceased, a motorcycle and a pistol lying on the ground. Moreover, the site map of the scene of crime shows that the site where the firing supposedly took place is actually a tri-junction, i.e. a road, flanked by a sugar cane field on one side and a brick kiln on the other side. This makes it unlikely that there were no workers, farm labour or passers-by at 2.20 PM when the shootout allegedly took place. None of these aspects were mentioned in the NHRC closure order.[131]

In the case of **Noor Mohammad:** The police registered FIR No. 0872/2017, for attempt to murder of the police officials and for stealing and concealing a motor cycle, after Noor Mohammad's death. However, the investigation found that the bike was registered in the name of the victim. The Executive Magistrate in the Magisterial Inquiry Report wrongly stated that the investigators could not find the property and offender. The Executive Magistrate did not note the fact that no property that was stolen, and the allegedly stolen bike was registered in the name of the deceased victim. The NHRC closure order was silent on this aspect.[132]

Further, as detailed in the earlier sections, the NHRC, like the Judicial and Executive Magistrates, also failed to scrutinize the inconsistencies in the police version emerging from the post mortem reports and the forensic and ballistic analysis of evidence. It failed to comment on the fact that while the police officers have sustained minor injuries, the post mortem reports show that lethal force was used on the deceased victims. Most of them were shot multiple times on their abdomen, torso and head and that in light of this the claim of the police that minimal force was used seems erroneous. Further, in most cases there is no proof of the deceased victim or his accomplice actually firing at the

police. Either the fingerprints of the deceased have not been found on the weapons recovered by the police, or there is no proof to connect the bullets that injured the police officers with the guns used by the deceased victims and their accomplices.

4.2.5. The NHRC did not create a conducive Environment for Witnesses/ Complainants to Seek Justice and Participate in the Inquiry Process

The NHRC has also failed the victim families and witnesses in another way. It failed to act on multiple and repeated communications from public witnesses, including family members of the victims, that they were facing reprisals and persecution from the police. During the inquiry of these 17 cases, civil society groups sent 13 letters to the NHRC, showing how false cases were being filed against the family members of the victims, as well as the threats and intimidation they faced to deter them from pursuing the cases.

Instead of ensuring witness protection, or investigating the allegations, the NHRC did not mention these letters in their inquiries. By not mentioning the reprisals faced by family members, the NHRC has effectively protected the police from any suspicion about their neutrality and motives. The following chapter demonstrates the persecution faced by the victims' family and the letters they sent to the NHRC during this period.

For example:

In **Waseem's** case: The NHRC closed the case without recording Waseem's family's statements.[133] The NHRC investigation team visited Waseem's family home in UP, without any prior intimation. Waseem's parents were travelling for work in Haryana. The NHRC closed the case without offering them a second opportunity to record their statements. The family even wrote to the Investigation Division on 17 December 2018, before the inquiry was closed, requesting that their statements be recorded. The urgency to close the case, without recording statements of key witnesses/complainants, is surprising considering that the inquiries seem to be following no timeline. At least two cases filed in May 2018 are still pending, more than three and half years later.

Further, it appears that the NHRC inquiry has relied on public witnesses in a selective

manner. The NHRC refers to certain statements of family members, saying that they have not expressed any suspicion about the killing. This is indicative of the NHRC using statements of the affected families only when it supported the police.

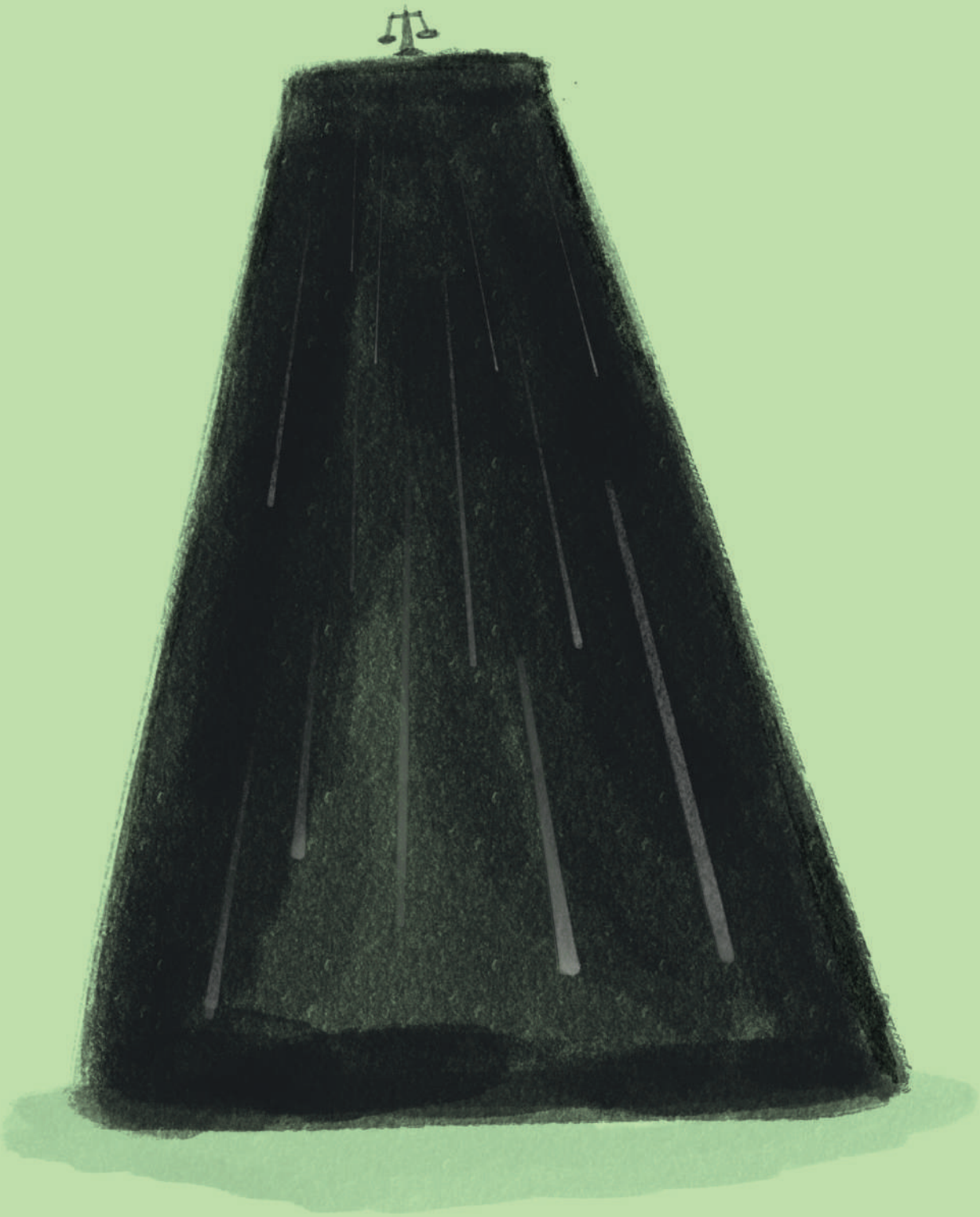
According to the PUCL Guidelines, the involvement of the NHRC is not necessary unless there is serious doubt about the independence and impartiality of the investigation in an alleged case of extrajudicial killing. The investigation carried out by the NHRC in these 17 cases leaves much to be desired. Like the police investigation and the magisterial inquiries, the NHRC Investigation Team also overlooked glaring inconsistencies and contradictions in the evidence and concluded that the "encounters" are genuine.

4.2.6. Conclusion

Much like the similarities in the FIRs, an examination of the 12 cases indicate patterns in the NHRC's reading of evidence and interpretation of facts. The NHRC has relied on the police to close these cases. Glaring contradictions in the police version, breaches of procedural and substantive norms, and gaps in evidence have either been overlooked or justified. The NHRC has failed to remedy the breaches of human rights caused by the problematic investigation conducted by the police in these cases. It has failed in its role to act as an effective check on the abuse of police powers. Furthermore, through its inquiries, the NHRC has legitimized the subversion of due process, supported the police's narrative, and has become a key part of the cover-up.

Chapter 5

ACCESS TO JUSTICE – A TRAIL OF REPRISALS



ACCESS TO JUSTICE – A TRAIL OF REPRISALS

This chapter describes the challenges victims' families face, as they seek justice for extrajudicial killings, with the support of civil society groups. It notes the reprisals they face at different stages in their fight for justice. Considering how state and non-state actors persecute victims' families, this chapter also evaluates existing Witness Protection guidelines and their effectiveness in cases of extrajudicial killings.

5.1. Seeking Accountability for Extrajudicial Killings

Usually, extrajudicial killings are perpetrated by state actors. Therefore - unlike other offences which are considered a crime against society and therefore prosecuted by the State – the State's role is conflicted in prosecuting extrajudicial killings. The burden of ensuring due process invariably falls on the victim. Often, in such cases, the State typically denies, resists, and opposes efforts seeking accountability.

Growing jurisprudence on victims' rights tries to ensure that victims have a role in the legal process. This is often invoked to support the primary responsibility of the State. However, providing the victim the right to participate in the legal process is not sufficient to ensure accountability. This is particularly true in cases of human rights violations, where the state tends to support the perpetrators, in part because the violations often arise from a considered and deliberate state policy. As this section demonstrates, victims and those supporting them are vulnerable to coercion, threats, intimidation, and other forms of reprisal. Furthermore, victims face the arduous task of mobilizing resources for legal representation to approach courts . For these reasons, civil society groups and individual human rights defenders have often supported victims and their families to pursue legal remedies.

After his visit to India from 19 to 30 March 2012, the UN Special Rapporteur on

extrajudicial, summary or arbitrary executions, Prof. Christof Heyns[134] noted the difficulties faced by families of victims of extrajudicial killings: *"The security forces refuse to register FIRs, including those related to killings or death threats. Persons attempting to register FIRs are often subjected to threatening treatment or to the fact that their complaints are not given serious consideration."* He noted how security forces created various obstacles to prevent the initiation of criminal proceedings, saying *"Families of victims face further difficulties as they lack full and easy access to autopsy reports, death certificates and other relevant documentation. Post-mortem examinations take an unnecessarily long time before being conducted and the subsequent deterioration of evidence, their inadequate conduct, as well as an inability of the families to obtain death certificates for a very long period."*[135]

5.2. The Burden of Initiating Investigations

The fact that FIRs are registered against the victims in these cases limits what accountability victims' families can seek within the criminal justice system. These FIRs are investigated without the statements of the families, and the cases are subsequently closed by the Magistrate without hearing the victim families. Moreover, the victim's version of what happened does not get recorded at any stage because FIRs are never registered against the police team. The inquiry by the Executive Magistrate recorded the victims' families' statements in a few cases analysed in this report. However, such an inquiry is not a forum where the family can seek legal relief or request investigation against the police team. Inquiries were initiated in these 17 cases only when complaints were filed before the NHRC. A majority of these inquiries have now been closed, and the Commission found no foul play on the part of the police officers involved, despite inconsistencies in the evidence presented.

A private party can file a criminal complaint with a Magistrate, asking that the Magistrate direct a criminal investigation.[136] In some of the 17 cases, the victim families made efforts to file such complaints to the local authorities, senior police officers and subsequently before the concerned Magistrates. None of these complaints have resulted in an investigation against the police. This section documents the efforts of the victim families

in initiating criminal investigations against the police officers involved in the killings.

5.2.1. Families' attempts at filing complaints

The victims' families have made several attempts to file complaints with relevant authorities. However, they have faced difficulties in getting the police and other higher-ups to act. This has not only been discouraging but has also affirmed further repression.

For instance, months before **Waseem's** death, a letter dated 21.01.17 was sent to IG, Meerut Range and DIG, Saharanpur by his mother describing how police officials from Shamli threatened her family (Waseem and his father). After Waseem's death, a letter dated 11.07.18 was sent to SP, Meerut by Waseem's mother requesting an investigation into her son's death. She sent a second letter dated 17.07.18 to DIG Meerut and SP, Meerut which also elicited no response.

In the case of **Gurmeet,** hisfamily made attempts to file complaints at the Police Station on several occasions. They were threatened by the police each time. A letter dated 12.06.17 requesting an investigation was sent to SSP Saharanpur by Mahendri (the victim's mother) but no action was taken by the police. Later, on 14.06.17, a complaint letter was also sent to the NHRC registered as Case No. 10150/24/64/2017.

In **Naushad and Sarvar's** case, Hamida (Sarvar's mother) and Anwar (Sarvar's brother) sent a letter dated 29.07.17 to DGP, Lucknow, PMO, Home Ministry and a letter dated 01.05.18 to SP Shamli, alleging that their kin was extrajudicially killed by the police. No action was taken.

The families of **Nadeem and Sumit Gujjar** knew that their relatives were picked up by the police, and were worried that they might be killed. The families had written to various authorities in furtherance of their suspicions. For instance:

In **Nadeem**'s case, his family members said he was picked up by the officials of police station Nai Mandi. It was shown that he fled from custody the next day. Nadeem's family faxed a letter to the NHRC, the district police officials and other authorities, about

Nadeem's illegal detention saying that they feared for his life. No action was taken by the authorities.

Similarly, in **Sumit's** case, three days before his death, a few witnesses saw him being abducted from a market in a car. A day before his death, Baghpat police informed Sumit's family that he was in police custody for questioning regarding a theft and would be released the next day. Next morning, Sumit's father heard that Sumit was "absconding" in a case registered against him, according to the police, and a reward was announced for him. The same evening SSP Gautam Budh Nagar held a press conference claiming that Sumit Gujjar, a known criminal, was killed in a police shootout. Complaint letters faxed to the DGP, the Chief Minister, the NHRC and to Mr. Luv Kumar, SSP, Gautam Budh Nagar, were not taken note of.

5.2.2. Complaints filed before the Magistrate for registration of FIR

In some cases, the victims' families approached Magistrates to register FIRs against the police. However, they were unsuccessful.

In the case of **Furqan**, his father Meer Hasan filed a complaint under Section 156(3) CrPC before the Judicial Magistrate, Muzaffarnagar against 16 named police personnel. He alleged they abducted Furqan and held him in illegal custody before killing him. The Magistrate dismissed the complaint, based on the police's reply that Furqan had multiple criminal cases pending against him, and that a Magisterial Inquiry was being conducted into the cause of his death. However, despite these reasons, the Judicial Magistrate had a duty to consider whether the incident may have been a staged "encounter", and to direct an investigation. However, as seen above, every forum has relied on the past criminal history of the victim to hold that the extrajudicial killing could not have been staged and the claim of self-defence is accepted merely on the say-so of the police, without any investigation or trial to prove this fact.

Extract from Order dated 16.01.18 of the Judicial Magistrate, Muzaffarnagar, dismissing the complaint under Section 156(3) CrPC filed by Furqan's father Meer Hasan:

"इस प्रकार थाना आख्या में फ़ुरक़ान शातिर अपराधी बताया गया है जिस पर 50,000 /- रुपये का इनाम भी घोषित था। पुलिस आख्या में फ़ुरक़ान का आपराधिक इतिहास भी बताया गया है जिसमें उसके विरुद्ध 08 मुकदमें पंजीकृत हैं।स्वयं प्रार्थी मीर हसन द्वारा अपने प्रार्थनापत्र में यह अंकित किया गया है कि कथित घटना की मजिस्ट्रेरी जांच उप-जिला मजिस्ट्रेट बुढ़ाना द्वारा की जा रही है जिसमे प्रार्थी अपना पक्ष रख सकता है। अतः इस स्टार पर प्रार्थना पत्र में किये गए कथनों के आधार पर अभियोग पंजीकृत कराये जाने का आधार नहीं है। प्रार्थनापत्र अंतर्गत धारा 156(3) द0 प्र0 सं0 निरस्त किये जाने के योग्य है।" *(Thus, in the police report, Furqan has been described as a dreaded criminal on whom a reward of Rs 50,000/- was also declared. The criminal history of Furqan has also been mentioned in the police report in which eight cases are registered against him. It has been mentioned by the applicant Mir Hasan himself in his application that a Magisterial Inquiry into the alleged incident is being conducted by the Sub-District Magistrate Budhana, in which the applicant can present his side. Therefore, on the basis of the statements made in the application on this point, there is no ground to register the case. The application is eligible to be dismissed under section 156(3) IPC.)*

Furqan's father challenged this order before the Allahabad High Court. A few months after this Revision Petition was filed, Furqan's father changed his lawyer, and told the Court that he wished to withdraw the petition. The order recording the withdrawal of the case does not contain any reasons for this withdrawal. In the affidavit submitted by Furqan's mother to the NHRC, she narrated the threats and intimidation her husband and others faced by the police, which could explain the withdrawal.

Relevant extract from the affidavit submitted by Furqan's mother to the NHRC in Case No. 10824/24/0/2018-AFE are as under:

"अनीस व् राहुल को थाना शाहपुर में ले जाकर बंद कर दिया गया था और मेरे पुत्र फ़ुरक़ान की बड़कता नहर पुलिया के पास खेतों में ले जाकर उपरोक्त पुलिस वालों ने गोली मारकर हत्या कर दी थी जिसके सम्बन्ध में मेरे पति द्वारा उपरोक्त पुलिस वालों के विरुद्ध धारा 156(3) CrPC. के अंतर्गत मुकदमा पंजीकृत करने हेतु प्रार्थना पत्र दिया गया है। अब उपरोक्त पुलिस वाले मेरे पति मीरहसन तथा अनीस व् राहुल को धमकी दे रहे हैं की या तो यह मुकदमा वापस करलो वरना तुम लोगों को भी हम फर्जी मुठभेड़ में मार देंगे , उपरोक्त पुलिस वालों से मेरी व् मेरे परिवार वालों की सुरक्षा की जावे तथा हमें इन्साफ दिलाया जावे।" *(Anees and Rahul were taken to Police Station Shahpur and locked up and my son Furqan was shot dead by the above mentioned policemen by taking him to the fields near the Barkata canal culvert. An application under Section 156(3) CrPC has been filed by my husband to register a case against the above-named policemen in this regard.*

Now these policemen are threatening my husband Mir Hasan and Anees and Rahul to either withdraw the case or they will kill these people in fake encounters. My family members and I should be protected from these policemen and we should get justice.)

Similarly, private complaints filed by the family members of Gurmeet, Naushad, Sarvar, Sumit Gujjar, and Waseem were dismissed by the Judicial Magistrates. The orders dismissing these complaints contain several errors, and shows the impossible burden placed on the victims' families.

5.2.3. Problems in accessing medical and legal records

A major challenge faced by a victims' families is accessing medical and legal documents, which are essential for setting the criminal justice system into motion. Access to such documents enables the families to navigate complex administrative structures. The lack of these documents leads to hurdles at every stage. Families are routinely threatened by the police while they are trying to access basic legal documents such as the FIR, Post Mortem Report and medical records from the hospital. Since all the FIRs are registered in the same police station as the one involved in the "encounter", it is difficult to access any documents from there. Additionally, families feel a lot of trauma and hostility on visiting the police station and seeing the policemen who killed their loved ones.

Victims' families and civil society groups have struggled to get documents from the NHRC. This report has documented the efforts made by complainants in NHRC Case No.10824/24/0/2018-AFE to get documents in the cases involving their family members as per the provisions of the Protection of Human Rights Act, through letters and RTI applications addressed to the NHRC. During the NHRC's inquiry process so far, the Commission has not put in place a process to keep the complainants updated and informed on progress in the case. The NHRC is the primary statutory body for the protection of human rights in India. It is unfortunate that it has acted with such indifference towards the families of victims of human rights violations.

Difficulties in accessing these documents is a tremendous problem for the victim. The

victims' family, seeking to charge the police with murder, has to do so without any evidence to support its claim. Therefore, the quest for justice does not progress far, and the fate of the 17 cases studied in this report illustrate this fact.

5.3. State Reprisal: The Cost of Seeking Accountability

Victims' families and human rights defenders have been subjected to reprisals, ranging from verbal threats and intimidation to physical violence and implication in fabricated criminal cases. These tactics aim to coerce the victims' families to abandon their pursuit of justice.

These threats have taken different forms. They include - registering FIRs based on false accusations against family members and witnesses; using informers to convey that the relatives would be arrested or killed in "encounters"; the threat of torture of arrested family members in jail; and humiliating the family by the police constantly visiting them. The reprisals became more serious once the family initiated legal action against the police officers and approached the criminal justice system.

5.3.1. Persecution of family members after the killing

Immediately after the victim's death, the police tried to intimidate the families into silence, to ensure that they did not initiate any action against the police. For instance:

In **Nadeem's** case, the police regularly visited his house and threatened his mother, Samar Jahan, saying she would be killed and murdered in a similar manner if she took any action. In **Naushad and Sarvar's** case,the police filed several false cases against family members. Further, Sarvar's brother, Anwar, was implicated in a false rape case, registered on 18.05.18, three days after the shootout. This was on the same day he filed an application u/s 156(3) CrPC before the Magistrate for registration of an FIR against the police officials. On 20.05.18, the police visited Anwar's house and threatened them to withdraw the 156(3) applications, saying that otherwise his family would be killed in a similar manner or would be implicated in false cases.

A newspaper report published on 04.04.18 talked about instances of police reprisal

against the families of Naushad, Sarvar, Furqan, Sumit and Shamim after they were killed. In Naushad's case, the report states as following,

> "*In Bhoora village, Naushad was charged under the Gangster Act in 2012. He was gunned down in an alleged encounter last year, on July 29. His family is now living in fear. Male members were charged with gangrape when elders challenged the killing as fake. Documents accessed by India Today show that a day after the family filed a complaint with National Human Rights Commission on August 3, the police came knocking and slapped a gang-rape case on its male members, including Naushad's brother and uncle. Inaam, the brother of Naushad says, "Our mistake is that we are poor. Look at our house, does it look like it belonged to any big criminal? Police are harassing us for filing the complaint. We have been charged with gangrape. The police want to paint the entire family as criminals. They keep sending policemen to our house to take back the complaint. If there is no help, we will be forced to put our thumb mark on whichever document they ask us to put [it] on"."*[139]

On 22.09.17, five days after **Jan Mohammad's** death, the police raided his family's house in the village and vandalized it. His younger brother Feroz was implicated in the cases in which Jaan Mohammad was earlier accused. The family did not apply for Feroz's bail out of fear that police would kill him if he came out of jail. Meanwhile, in **Shamim's** case the family stated that the police had been pressuring them since his death, and even asked them to "sign some papers".

On 02.10.17, when police said **Sumit Gujjar** was absconding, his family was asked to pay bribe of Rs. 3,50,000 to release Sumit. They were also followed and intimidated. Moreover, Sumit's brothers - Raj Singh and Pravin - were implicated in a false case on charges of rape and dacoity.

In **Waseem's** case, his mother was accused of trafficking drugs six days before he was murdered, to make him surrender. His family was in jail when Waseem was arrested and killed. They were not allowed to attend his funeral. His mother said that police officials were threatening Waseem and his father, for a few years before his death, saying they would be implicated in false cases.

5.3.2. Persecution continued even after the involvement of the NHRC

Even after the families made complaints to the NHRC, they were threatened and intimidated.

On 07.09.17, the day **Shamshad** was shown absconding, SO Police Station Bihari Garh and other officers came to his house and took Shamshad's four brothers to the Police Station. The brothers were made to sign blank papers and were threatened with dire consequences if they supported Shamshad. The NHRC investigation (Case Number 10824/24/0/2018-AFE) in Shamshad's case was conducted by a three-member investigation team on 31.07.18. A complaint was filed with the NHRC on 02.08.18, stating that the NHRC team had reached Shamshad's house, accompanied by ten police officials. This included SO Police Station Bihari Garh and Rajendra Bhatnagar, who were earlier posted at Police Station Sadar Bazar, which had carried out the alleged "encounter". The heavy presence of police officers during the NHRC investigation was inconsistent with the tenets of a fair and independent investigation.

Ikram's sons were threatened by the police when they went to the police station to inquire about the incident that killed their father. On 12.05.18, a complaint was submitted to NHRC in Case Number 10824/24/0/2018-AFE. The complaint stated that on the night of 10.05.18 at around 9.30 PM, five-six police officials, visited Ikram's house along with Waseem Boss (a police informer). His wife was alone in the house with her children, and they threatened her with dire consequences. The police officials questioned her about the complaint filed with the NHRC. On 05.10.18, another complaint was submitted to NHRC in Case Number 10824/24/0/2018-AFE. This stated that on 03.10.18, afternoon, the family filed a petition u/s 156(3) CrPC for the registration of an FIR against the police officials involved in the execution of Ikram, with the support of a civil society organization. At 9.00 PM on the same day, Sajid (Ikram's son), was attacked, barely 100m from the Barot Police Station. He was shot in his leg by four people known to be close to the police in the area. They fired eight to ten rounds of bullets, one of which hit Sajid on his leg. The other bullets grazed past his head and shoulders.

In **Furqan**'s case, the police repeatedly threatened to kill his father, Meer Hassan, if he tried to pursue any legal action. Similarly, Furqan's brothers – Anees and Rahul, who were eyewitness to Furqan's abduction and in custody since then - were also threatened in a similar fashion. Immediately after filing the application u/s 156(3) CrPC before the Magistrate, the police started pressuring Meer Hassan to withdraw the case. He wrote to other authorities, including the NHRC, to have an FIR registered against the police for the murder of his son. But to no avail. His complaint was also dismissed by the courts. He then filed a Criminal Revision Petition (C.R. No. 1222/2018) in the Allahabad High Court. Thereafter, on 16.05.18, he withdrew the Criminal Revision Petition. This was done under pressure from the police officers, who threatened their sons (who were in custody) with dire consequences and also threatened sexual violence against their daughter. Meer Hassan was taken to Allahabad by the police officers, kept in a hotel, and was forced to employ a new lawyer, who withdrew the case in the Allahabad High Court.

5.3.3. Police persecution of human rights defenders

Police also persecuted the human rights defenders and complainants in the ongoing NHRC investigation, who were supporting the victims' families.

Mr. Rajeev Yadav is the convenor of Rihai Manch, a human rights organisation working on cases of extrajudicial killings in UP and a complainant in Case No. 10824/24/0/2018-AFE before the NHRC. On the night of 05.07.18, he was allegedly threatened and harassed on the phone by Kandhapur Police Station In-Charge (Azamgarh, UP), Mr. Arvind Yadav. During the call, Mr. Arvind allegedly threatened to file a false case against Mr. Yadav for naming him in the extrajudicial killing case. The audio clip of the conversation was released at a press conference held by Rihai Manch on 06.07.18, demanding action against the UP police official. The Complainant sent a letter dated 18.07.18 to the NHRC stating that the threats issued to Rajeev Yadav were a reprisal due to the submission of the extrajudicial killing case to the NHRC. The NHRC instituted an inquiry but closed the case on the ground that an inquiry by Circle Officer, Azamgarh had exonerated Sub Inspector Arvind Yadav, and that from the contents of the conversation in question, no cognizable offence was committed.[140]

On 30.08.18, Mr. Akram Akhtar Chaudhary (head of Afkar India Foundation), another complainant in the NHRC complaint, was threatened by police officers claiming to be from the office of the Superintendent of Police (SP), Shamli, UP on the phone. A complaint was submitted to SP Shamli, and a letter was sent by the Complainants to the NHRC informing them about the threats.

5.4. The Witness Protection Framework: A Fig Leaf of Protection

Victims and witnesses of crimes are often reluctant to come forward and share information and evidence because of perceived or actual intimidation or threats against themselves or members of their family. In normal circumstances, when the violence has been perpetrated by other civilians, and witnesses/complainants are threatened, they can approach the police and courts for protection.

In cases of extrajudicial violence, when police and state actors are making the threats, the legal framework does not offer effective protection. This concern is further exacerbated when the victims' families are from marginalized communities, or when they are labelled as "criminals". It is therefore necessary to evaluate whether the Witness Protection Scheme, 2018[141] is at all an alternative that can provide safety and support to the families facing persecution by the police.

Witness Protection Scheme, 2018

The Witness Protection Scheme aimed to protect the life and safety of witnesses. The measures include:

- a police escort for the witness up to the Courtroom;
- using audio and video means for recording testimony to ensure anonymity;
- temporary residence in a safe house,
- providing new identity,
- relocation of witnesses,

The need for such a scheme was first discussed by the Supreme Court in Mahender Chawla v. Union of India[142] where it was noted that that one of the

main reasons witnesses turned hostile was that they were not protected by the State.

The scheme was declared to be 'law' under Article 141 of the Constitution. It requires that an application be made to a Competent Authority. This should be forwarded for the preparation of a Threat Analysis Report (TAR), prepared by the Additional Commissioner of Police/Deputy Commissioner of Police in charge of concerned Police Station. This should be done within a period of five working days from the receipt of the report. Clause 6 provides that the overall responsibility for the implementation of all witness protection orders passed by the Competent Authority lie with the Head of the Police in the State/UT. Furthermore, if the Competent Authority finds that there is a need to revise the Witness Protection Orders, a fresh TAR shall be made by the ACP/DSP in charge of the concerned Police sub-division.

The Scheme provides that the Witness Protection measures ordered shall be proportionate to the threat and for the duration of three months. They can include the following; monitoring of mails/telephone calls; ensuring witness and accused do not come face to face during investigation/trial; concealment of identity; holding an in-camera trial; regular patrolling around witness' house, etc.

It is pertinent to note that as per the scheme, the primary responsibility of protecting witnesses is of the police.

The scheme suffers from serious gaps, making it entirely unsuitable for cases of extrajudicial violence committed by the police. Victims' families and other witnesses, who have made statements testifying to police harassment and coercion, have to rely on the same police force to prepare the TAR and protect them. This is inconsistent with the principles of natural justice: that the ACP/DSP of a particular subdivision would be preparing the TAR, when officials subordinate to him are the ones implicated by the victim family for an extrajudicial killing.

Furthermore, the scheme provides a limited framework of protection for only three months at a time. The analysis of the 17 cases in this chapter shows that the threat to the families goes much beyond three months and is made in different forms. The threats received by the witnesses, family members and human rights defenders have all come

from the police of the local police stations where they were situated. The families approached higher authorities, courts and the NHRC, but with no success.

Chapter 6

ACCOUNTABILITY IN EXTRAJUDICIAL KILLINGS: A LOST CAUSE

ACCOUNTABILITY IN EXTRAJUDICIAL KILLINGS: A LOST CAUSE

The 17 cases studied in this report reveal the multiple failures of the current legal regime to investigate police killings. These failures, beginning with the gaps in the PUCL guidelines, have resulted in a systemic distortion ranging from the processes of criminal law to the flawed oversight of the NHRC. These authorities exonerated the police while ignoring legal standards, including their own guidelines in the case of the NHRC, and the evidence presented. Despite the legal edifice in place, we remain distant from what should be the settled process in cases of police killings i.e., the police being made to prove, in a court of law, that they killed in self-defence, using only the force which was necessary and proportionate to any threat they faced. This indicates that the criminal justice system, as well as the national human rights institution, are failing to establish robust police accountability.

The larger implications of this systemic failure extend beyond their significant impact on policing and go to the heart of the exercise of state power, constitutionalism, and rule of law.

6.1. Supreme Court's guidelines in *PUCL v. State of Maharashtra*: A case of permissive lawlessness

The investigations into these 17 cases of killings from UP expose the impact of the ambiguities of language and gaps in the Supreme Court's guidelines in *PUCL v. State of Maharashtra*,[143] which are effectively translating, in practice, into impunity for killings.

6.1.1. Absence of specific language requiring FIRs to be registered against the police

Guideline 2 of the PUCL guidelines states that once an "encounter" takes place, and a "firearm is used by the police party and as a result of that, death occurs, an FIR to that

effect shall be registered". This does not explicitly state that the FIR must be registered against the involved police officials. Practice on the ground in the 17 cases reveals that the police take advantage of this ambiguity and register FIRs *against* the deceased victims. Rather than opening the pathway for the police to account for the use of force leading to death, this perpetuates the long-running police practice of filing FIRs against the deceased. To make things worse, this is now taking place in the guise of complying with Supreme Court guidelines, facilitated by the guideline's ambiguous language.

The weak language in the PUCL case can be contrasted with the judgement of the Andhra Pradesh High Court in 2009, which also laid down directions on procedures to be followed after police killings. The AP High Court's direction on the registration of FIRs states, "that where a police officer causes death of a person, acting or purporting to act in discharge of official duties or in self-defence as the case may be", this "first information" shall be recorded and registered as an FIR.[144] The AP High Court's direction rightly centers the emphasis on a police officer "causing" death, making clear that the police action should be the basis of the investigation. This level of clarity is needed to ensure that the first allegations are properly recorded.

6.1.2. Absence of provisions to prevent easy recourse to legal evasions

The analysis of the UP cases highlights how Section 46 of the Criminal Procedure Code - which allows for police to use force while arresting a person - is unquestionably used as a license to justify excessive force, to the extent of causing death. Section 100 of the Indian Penal Code, which exempts a person from punishment for committing murder, if the murder is committed in self-defence, is used by the police to introduce uncorroborated claims that the victim attacked them.

Unfortunately, the PUCL guidelines contain no provisions that guard against flimsy legal evasions in practice. The AP High Court's 2009 ruling, in contrast, made it clear that "the existence of circumstances bringing a case within any of the Exceptions in the Indian Penal Code including the exercise of the right of private defense (a General Exception in Chapter IV IPC), cannot be conclusively determined during investigation".[145] This makes

it clear that the plea of self-defence, in the context of extrajudicial killings, can only be determined at trial. The AP High Court's direction instructs Judicial Magistrates to desist from taking closure reports filed by the police at face value and to "critically examine the entirety of the evidence collected during investigation".[146] These directions are missing in the current law, leaving easy recourse to legal evasions and dulled judicial scrutiny.

6.1.3. The impossibility of a fair and independent investigation

Guideline 3 in the PUCL Guidelines requires the investigation to be conducted by "the CID or police team of another police station under the supervision of a senior officer (at least a level above the head of the police party engaged in the encounter)".[147]

To begin with, the possibility of an independent investigation is extinguished as soon as no FIR exists against the police officers involved. The UP cases provide many instances of this guideline being breached, with no consequence for the police team involved in the killing. The investigation is transferred/assigned to a different police team days after the incident. By this time, the implicated police team have interfered with the primary evidence, the scene of crime, and the body. In many cases, the officer heading the investigating team was not senior to the senior most officer of the police team involved in the firing, again in explicit breach of the guideline.

The fact that in UP, investigations into killings were closed by the investigating teams, strongly indicates that this guideline is not adequate to withstand the police machinations to protect their own. This is a global problem – in many countries, of the uneasy reality of police colluding to cover up criminality by fellow officers. The Supreme Court of India in a judgment delivered nearly 30 years ago recognised that, *"Bound as they are by the ties of brotherhood, it is not unknown that the police personnel prefer to remain silent and more often than not even pervert the truth to save their colleagues"*[148]

With the police investigating the police, the 17 cases in UP have led to the investigating teams closing all the cases, despite glaring gaps in the police claims, breaches in securing evidence and contradictions which undermine the police version in each case. Statements of family members have not been recorded, or if they are recorded, no efforts have been

made to corroborate their claim that the victims were abducted prior to the killings. Police narratives have "prevailed" in every case.

Where investigations have found police wrong-doing, this is usually where the investigation has been conducted by the Central Bureau of Investigation or Special Investigation Teams composed of police officers from another State, selected by the Court, or Commissions of Inquiry. This has usually happened in response to Petitions filed by the victim's family or civil liberties groups. There is no self-activating mechanism in the system to ensure a fair investigation into extrajudicial killings.

The thorny issue of the capability or willingness of the state police to conduct unbiased investigations into alleged crimes by their own colleagues, requires serious consideration. This must be preceded by detailed documentation of experiences on the ground across multiple states to assess the extent to which police obstruct investigations into killings.

6.1.4. Ambiguity regarding mandatory judicial inquiry into a custodial death

Guideline 4 of the PUCL guidelines requires that a "magisterial inquiry under Section 176 of the Code must invariably be held in all cases of death which occur in the course of police firing".[149] In the 17 UP cases, these inquiries are being assigned to Executive Magistrates, rather than Judicial Magistrates. This practice on the ground signals an additional ambiguity in the PUCL guidelines, which is underming the nature of accountability.

Sections 174 and 176 of the Code of Criminal Procedure require inquiries to be conducted in situations where the death of a person occurs in suspicious circumstances. As per Section 174, an Executive Magistrate is empowered to conduct an inquest into deaths in a variety of situations, including where the death "raises a suspicion that some other person has committed an offence". Section 176(1) reiterates and slightly expands this role of the Executive Magistrate to inquire to determine "the cause of death". Section 176(1A) mandates a Judicial Magistrate to conduct an inquiry where a person in police or judicial custody, dies, or disappears, or a woman is raped in custody. The PUCL guidelines fails to

explicitly state that the magisterial inquiry is the inquiry by a Judicial Magistrate under Section 176(1A) CrPC. They only mention "magisterial inquiry under Section 176", leaving some room for interpretation. It is not clear whether this lack of specificity is providing license for these inquiries to be assigned to Executive Magistrates when they should be done by Judicial Magistrates.

The PUCL guidelines also fail to build on the Supreme Court's jurisprudence on the meaning of "custody", which has been interpreted to refer to any situation in which there is a "restraint on liberty" by the police.[150] It does not require being under formal arrest or in the confines of a police station. If Guideline 4 had specified a magisterial inquiry under Section 176(1A) CrPC, it would have clarified that killings in police action, in shootouts, are to be taken as custodial deaths no matter the location where they take place, for instance a street, highway or forest. This would have made it clear that Judicial Magistrates are to conduct inquiries into these deaths, with the hope of some check and balance against the police investigation.

6.1.5. PUCL guidelines systematically being breached

The UP cases also reveal repeated breaches of many of PUCL guidelines which should be binding. In most of these cases, police did not submit their weapons for forensic analysis despite Guideline 14 requiring this.[151] In fact, individual police officers have told the NHRC that "this is not a practice in Uttar Pradesh generally" and that "there is a shortage of weapons".[152] None of the victims' families received compensation under Section 357A of the CrPC, despite this being required, irrespective of whether the "encounter" was staged or genuine.

As detailed above, ambiguities and deficiencies in the PUCL guidelines are allowing the police to evade accountability and translating into increasing impunity for these killings. For these reasons, the guidelines given by the Supreme Court in *PUCL v. State of Maharashtra,* which presently have the binding force of law, require renewed consideration by the Court.

6.2. NHRC's Futile Oversight

Unlike the criminal justice system which foreclosed accountability, the NHRC was a forum where complaints *against* the police were able to be brought in these 17 cases. However, the NHRC's investigations and findings in the 17 UP cases demonstrate the extent to which it failed to ensure fair or credible inquiries into these police killings.

Firstly, the NHRC severely delayed its inquiries in each case, and did not take corrective measures or urgency to resolve the delay. In its first order in May 2018 - just after it admitted the complaints of the killings - it set a deadline to complete its inquiries within four weeks. At the time of this writing, more than three years have passed since the NHRC issued that initial order. India's apex human rights institution should have completed its inquiries into alleged human rights violations as promptly as possible. The NHRC should have been aware that victims' families were vulnerable to intimidation and threats, and that evidence can fast be lost. However, the NHRC neither responded to, nor took on record, letters attesting to the persecution of families during its pending inquiries.

Furthermore, the NHRC conducted opaque inquiries with no efforts to ensure complainants could participate in any way. Complainants had to seek updates on the status of inquiries themselves, with no information forthcoming from the Commission at any point. Out of the 17 cases, 12 were closed by the NHRC without informing and obtaining comments from the civil society complainants, in violation of its own internal practice regulations.

Of the 17 cases, the NHRC has decided 14 cases to date. Of these 14, the Commission has closed 12 cases with findings of no human rights violations by the police. One case was transferred to the UP State Human Rights Commission, and in one case, the NHRC held that the deceased was killed in a 'fake encounter' by the police and directed compensation to be paid to the affected family and investigation of the case by an independent agency.

With an overwhelmingly clean chit for the UP Police, one would expect the NHRC's

orders exonerating police officers suspected of such grave human rights violations to be based on watertight grounds and reasoning. Yet, the analysis of the NHRC's final closure orders contains glaring contradictions as reflected in the police versions of the facts, significant breaches of procedural and substantive mandates, and gaps in evidence. These have either been overlooked or justified to arrive at the final conclusion. Breaches of its own guidelines and precedents have also been condoned.

The NHRC's past track record reveals it has been reluctant to order prosecution of officials for extrajudicial killings, even when it finds rights violations. For instance, the report of the Justice Sadashiva Committee (an inquiry panel set up by the NHRC in 1999) gave a strong indictment against the Special Task Forces of Karnataka and Tamil Nadu for committing atrocities on tribal people and villagers during their operations to capture the forest brigand Veerappan. However, the NHRC only directed that compensation be paid to victims. Despite holding that the STF officials were responsible for committing grave violations including extrajudicial killings, rape, torture and illegal detentions, no prosecution was directed by the Commission.[153] The NHRC also remained a silent spectator to the extrajudicial killings committed by security forces in Manipur for several decades between 1979 and 2012. It was only after civil society organisations went to the Supreme Court that the NHRC became active in investigating these cases.[154] While the NHRC has been quick to grant compensation where killings seem to be prima facie extrajudicial, it is known to shy away from ordering prosecution of officials.

While these 17 cases from UP are a relatively small set, the outcomes and the rigor of the NHRC inquiries in these cases expose systemic failings in the organization. Civil society actors have long raised questions about the independence of the NHRC. Considering that the majority of complaints received by the NHRC concern allegations of human rights violations by police officers, fundamental questions about the structural autonomy and make-up of the Investigation Division arise.[155]

The Investigation Division of the NHRC comprises entirely of police officers who are on deputation from state and central police organisations. A police officer of the rank of

Director General of Police (DGP) heads the Investigation Division and is assisted by a Deputy Inspector General (DIG) and four SSPs. Each SSP heads a group of investigative officers, comprising of DSPs, Inspectors and others.[156]

It needs to be borne in mind that the NHRC is envisioned as a forum for independent and external investigations into cases of human rights excesses by public servants, with police as frequent perpetrators. In cases where police are the alleged perpetrators, investigations by police officers affects perceptions of the integrity of investigations, violates principles of natural justice, and may severely impact the credibility of the investigation in the eyes of the victims/survivors of human rights violations.

Moreover, the very existence of the NHRC is predicated on its providing recourse to human rights inquiries. Police are trained to conduct criminal investigation, not human rights inquiries; another reason for their being ill-suited as the sole NHRC investigators. It is therefore axiomatic that in the long-term, the NHRC needs an independent and dedicated cadre of human rights investigators of diverse backgrounds and skills, specifically trained in investigating claims of human rights abuses. In the interim, at the very least, the NHRC must have detailed rules to address the fundamental conflict of interest arising due to its exclusive reliance on police officers as investigators, especially in cases involving police officers as alleged perpetrators. At any rate, police officers whose parent cadre is the same as the police officers under investigation must on their own volition recuse from every part of such proceedings.

A key issue of conflict of interest plagues the NHRC inquiry in the UP cases that have been studied in this report. The present DIG of the NHRC's Investigation Division[157] belongs to the Indian Police Service of UP cadre.[158] She began her tenure with the NHRC on 23 January 2019 as a SSP.[159] Before being transferred to the NHRC, between July 2017[160] and April 2018[161] this officer served as SSP of Meerut district in UP. During her tenure, multiple instances of extrajudicial killings and injuries were reported from Meerut. These incidents were widely reported in the local media.[162] These instances include the alleged extrajudicial killing of Mansoor on 27.9.17, Waseem on 28.9.17 and

Noor Mohammad on 30.12.17 - three of the 17 cases that were being investigated by the Investigation Division of the NHRC since May 2018.[163]

It is a matter of serious concern that the current DIG of the Investigation Division of the NHRC belongs to the UP Police cadre, when it is the government of UP that is notorious for touting itself as the "encounter capital" of the country with the UP Police as its operational arm to carry out these killings. It is most troubling that some of these inquiries may pertain to extrajudicial killings that took place during the officer's tenure as SSP, Meerut. The appearance of bias by itself is sufficient for questions to be raised when the matter pertains to human rights abuses and the performance of an accountability organization. The implications of these factors raise serious questions on the credibility and fitness of the inquiries conducted by the NHRC and its role as an oversight mechanism in cases of extrajudicial killings.

6.3. No judicial scrutiny

At the pre-trial stage, judicial magistrates have wide powers to ensure fair and unbiased investigation of cases. They can direct the registration of an FIR and monitor the investigation to ensure that the police hold a proper investigation.[164] Further, the Magistrates have the discretion to disregard the closure reports filed by the police and take cognizance of the offence under section 190 CrPC.[165]

However, in the UP cases, the police investigations were conducted on the basis of predetermined conclusions - starting from the recording of the FIRs and through each stage of investigation. The object seemed to be to uphold the police claims of being attacked and "justifiably" resorting to deadly force. Meaningful judicial scrutiny of the police investigations was missing. This signals the absence of the checks and balances that the Judicial Magistrate's role should have provided in these cases.

Judicial Magistrates failed to scrutinise the facts and evidence being presented in the police investigations and effectively challenge the police's claims and actions. They did not exercise judicial power to challenge the police's claims that the deceased was the

accused, and the police were the victims. Instead, they condoned an unconstitutional procedure of the investigation alone determining that force was used in self-defence, without any trial and cross-examination.

This report further notes how the police's claims were reflected in all the materials - from the collection and analysis of documents, the questioning of witnesses, to the tone and tenor of the Closure Reports. The Magistrates failed to identify the violations of law, and the factual inconsistencies and contradictions, that were the basis of the findings of the investigations.

In these cases from UP, the Magistrates had a judicial duty to ensure a fair and effective investigation in these cases. They should have directed the investigating team to register FIRs against the police teams and conduct further investigation into the use of force by the police. They should have directed the police to collect pertinent evidence such as forensic reports, ballistic analysis reports of weapons alleged to have been used by the police party and the victims, as well as other material such as CDRs, logbooks of vehicles and ammunitions, etc.

It is also sorely disappointing that the local area Magistrates dismissed the victims' families' complaints under Section 156(3), seeking FIRs and investigation against the police under the necessary offences. With the police refusal to ensure the proper registration of FIRs, the Magistrates' courts were the immediate remedy by which investigations on the police use of force that caused death could have proceeded. Unfortunately, this remedy too foreclosed justice.

6.4. Implications for policing and crime "control"

Since 2017, the political and police leadership in UP have made declarations, celebrating, and endorsing "encounter killings", as a police strategy for crime prevention and control.[166] This has been made possible by an absence of judicial scrutiny. These endorsements further support the official narrative that "police encounters" have a dramatic and instant impact on organised crime. The indulgence given to violence as a

legitimate exercise of state power stands exposed.

This has led to the erosion of lawful and effective policing. The aims of democratic policing - such as preservation of life - are ignored, and no questions are asked about a style of policing which results in deaths in "addressing" and "preventing" crime. In various rulings, the Supreme Court has reinforced that "encounters" cannot be a mechanism of policing in a democracy and has disapprovingly called this "encounter philosophy" a criminal philosophy.[167] The apex Court has also categorically warned that "*it is not the duty of the police officers to kill the accused merely because he is a dreaded criminal. Undoubtedly, the police have to arrest the accused and put them up for trial*".[168]

As indicated in media reports, police officers are seemingly given incentives to kill or be violent. This undermines efforts to build a culture of policing that is based on meticulous evidence-based policework and investigation. It will affect all areas of policing and potentially violate fundamental rights along the way, as in the case of killings.

The Supreme Court's directions in the PUCL case, notwithstanding their limitations, are binding law. They require police and governments to account for deaths arising out of police shootings. As in these 17 cases, the UP Police and the state government have breached their legal obligation to account for deaths as mandated in these guidelines. These breaches serve to mask offences, and their perpetuation signals a breakdown of the justice system's checks and balances which is meant to keep police use of force within the bounds of legal necessity and proportionality. It emphasizes how police arbitrariness and impunity have grown and compromised a culture of legality.

Scholars have criticised the UP government's flagship policy of "police encounters" as well. They have succinctly observed that, "*When encounters are rendered into policy, even the fig leaf of self-defence falls away, exposing naked lawlessness*".[169]

6.5. Concluding Remarks

The Constitution's guarantees equal protection of law, due process, and the protection of the right to life. This is also recognised by the Supreme Court's PUCL guidelines. However, these cases from UP reveal that long-standing pathologies of the state use of violence, and measures to cover this up, are far from being cured. This report demonstrates the abject failure of the criminal justice system to ensure accountability for police killings. This is in essence a failure to ask questions of, and rein in, state violence. The victims of extrajudicial violence and their surviving families have to endure this betrayal by the criminal justice system and are failed by the same institutions that should be committed to protecting them.

The policy of "police encounters" also creates a fearful society, as the cracks in the rule of law betrays the promise of peace and promotes a culture of impunity where the police feel immune to law. It promotes a permissive social culture, which supports quick justice and has lost faith in institutions of the justice delivery system. Last but not the least, extrajudicial violence does not reduce crime. It is a myth perpetuated by the police to distract citizens from the problems of violent crime and to encourage vigilante justice.

It is hoped this report will propel further doctrinal research into police killings, as well as the quality of investigations into them. There is a need to discern through documentation and analysis of ground-level practices whether police in India are being held to account for killings. If repeated patterns of evasions and impunity, arising out of ambiguities in the Supreme Court's PUCL guidelines, as in the UP cases, surface across states, the need for judicial reconsideration of the guidelines becomes even more urgent. The experience of UP, through the extensive analysis of these 17 cases, signals the grave violation of constitutional rights being perpetrated as state practice, extinguishing law and life. A collective acknowledgement of these grave violations is the first step towards the long process of seeking accountability and upholding the rule of law.

ENDNOTES

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2. Naushad and Sarvar, both, were killed in the same incidence of police firing. The Report therefore documents 17 cases of alleged extrajudicial killings which lead to the death of 18 people.

3. Since the allegations against the police have not been proved in any court or legal proceedings (except in one case) they should be read in that context. The Report, however, points towards glaring discrepancies and loopholes in the investigation which exonerated the police officials without any trial.

4. The NHRC Order dated 09.05.2018 in Case No. 10824/24/0/2018-AFE registered on Complaint of Henri Tiphagne and Others in respect of Noor Mohammad@Haseen Mota, Akbar, Waseem, Naushad, Jaan Mohammad, Ehsaan, Gurmeet and 10 others also specifically summoned the following documents -

5. There has been no response by the NHRC to the letters written by the complainants to get information about the status of this case which is not available in the public domain.

6. CIC File No. CIC/NHRCM/A/2020/139604.

7. These set of documents include the following - FIRs, Post Mortem reports, Site Plans, GD Entries, Seizure Reports, Reports of Inquest proceedings, Photographs of place of occurrence of incident, Inspection reports, Magisterial Inquiry Reports, Reports sent to the NHRC by the Superintendent of Police and DGPs, Criminal History, Statements recorded by the NHRC of medical doctors, forensic experts, police personnel. In few cases the documents included - Police Final (closure) Reports, Court orders, FSL Reports including reports for fingerprint analysis, gunshot residue and trace metal detection, Ballistics reports and MLCs and treatment reports of injured officers.

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58. See The Universal Declaration of Human Rights, 1948, Article 6 of the International Covenant on Civil and Political Rights (ICCPR), 1966, Art. 2, of the European Convention on Human Rights (ECHR), Article 4 of the American Convention on Human Rights, 1969, Article 4 of the African Charter on Human and Peoples' Rights, 1981 and Article 5 of the Arab Charter on Human Rights, 2004.

59. See Enforced Disappearance and Extrajudicial Execution: Investigation and Sanction: A Practitioners Guide, International Commission of Jurists, 2015 p.66 (citing Human Rights and Law Enforcement - A Manual for Human Rights Training for the Police, Professional Training Series No.5/Add.2, 2004, Index HR/P/PT/5/Add.2, p.15). Available at http://icj.wpengine.netdnacdn.com/wp-content/uploads/2015/12/Universal-Enforced-Disappearance-and-Extrajudicial-Execution-PGNo9-PublicationsPractitioners-guide-

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60. People's Union for Civil Liberties v. Union of India (UOI) and Ors. [(1997) 3 SCC 433]. Available at https://indiankanoon.org/doc/544871/.

61. Jaspal Singh Gosain v. Central Bureau of Investigation, 2018. Available at https://indiankanoon.org/doc/29093853/?__cf_chl_jschl_tk__=pmd_Q5ae08j.hj6DxSYK00V9x5uxB6xfmBc4BSoy9CMyOuQ-1631154550-0-gqNtZGzNAiWjcnBszQhl.

62. People's Union for Civil Liberties v. Union of India (UOI) and Ors. [(1997) 3 SCC 433]. Available at https://indiankanoon.org/doc/544871/.

63. OHCHR. (2017). The Minnesota Protocol on the Investigation of Potentially Unlawful Death (2016): The Revised United Nations Manual on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions. Paragraph 15. Page 5. Available at https://ohchr.org/Documents/Publications/MinnesotaProtocol.pdf.

64. Ibid, Paragraph 22. Page 7.

65. Ibid, Paragraph 32. Page 8.

66. Ibid, Paragraph 32. Page 8.

67. Ibid, Page 12.

68. Ibid, Paragraph 51. Page 13.

69. Ibid, Paragraph 52. Page 13.

70. The Guidelines issued by the Supreme Court in PUCL v. State of Maharashtra, 2014 and other judgments and the Guidelines issued by the NHRC have been collated in Annexure 4.

71. National Human Rights Commission. (1997, March 29). Letter to Chief Ministers regarding the Procedure to be followed in cases of deaths in police encounters. Available at http://www.wbja.nic.in/wbja_adm/files/Some%20useful%20National%20Human%20Rights%20Commission%20guidelines.pdf

72. National Human Rights Commission. Guidelines for video-filming and photography of post-mortem examination in case of death in police action. Available at https://nhrc.nic.in/sites/default/files/Guidelines_for_video_photography_of_PME_death_in_police_action.pdf

73. National Human Rights Commission. (2010, May 12). Death during course of Police Action. Available at https://nhrc.nic.in/sites/default/files/Death%20During%20the%20course%20of%20Police%20Action.pdf

74. [(2014) 10 SCC 635]. Available at https://indiankanoon.org/doc/25812914/?__cf_chl_jschl_tk__=pmd_16e6cd6706f5c96d68d90618ac4ffa719f925910-1628747126-0-gqNtZGzNAiKjcnBszQiO.

75. Section 190. Cognizance of offences by Magistrates-

(1) Subject to the provisions of this Chapter, any Magistrate of the first class, and any Magistrate of the second class specially empowered in this behalf under sub- section (2), may take cognizance of any offence-

(a) upon receiving a complaint of facts which constitute such offence;

(b) upon a police report of such facts;

(c) upon information received from any person other than a police officer, or upon his own knowledge, that such offence has been committed.

(2) The Chief Judicial Magistrate may empower any Magistrate of the second class to take cognizance under sub- section (1) of such offences as are within his competence to inquire into or try.

76. Section 357 A. Victim compensation scheme -

1. Every State Government in coordination with the Central Government shall prepare a scheme for providing funds for the purpose of compensation to the victim or his dependents who have suffered loss or injury as a result of the crime and who require rehabilitation.

2. Whenever a recommendation is made by the Court for compensation, the District Legal Service Authority or the State Legal Service Authority, as the case may be, shall decide the quantum of compensation to be awarded under the scheme referred to in sub-section (1)

3. If the trial Court, at the conclusion of the trial, is satisfied that the compensation awarded under section 357 is not adequate for such rehabilitation, or where the cases end in acquittal or discharge and the victim has to be rehabilitated, it may make a recommendation for compensation.

4. Where the offender is not traced or identified, but the victim is identified, and where no trial takes place, the victim or his dependents may make an application to the State or the District Legal Services Authority for award of compensation.

5. On receipt of such recommendations or on the application under sub-section (4), the State or the District Legal Services Authority shall, after due enquiry, award adequate compensation by completing the enquiry within two months.

6. The State or the District Legal Services Authority, as the case may be, to alleviate the suffering of the victim, may order for immediate first-aid facility or medical benefits to be made available free of cost on the certificate of the police officer not below the rank of the officer incharge of the police station or a Magistrate of the area concerned, or any other interim relief as the appropriate authority deems fit.

77. Section 96 to 100 of the IPC, read with Section 105 of the Indian Evidence Act.

Section 105. Burden of proving that case of accused comes within exceptions—When a person is accused of any offence, the burden of proving the existence of circumstances bringing the case within any of the General Exceptions in the Indian Penal Code, (45 of 1860), or within any special exception or proviso contained in any other part of the same Code, or in any law defining the offence, is upon him, and the Court shall presume the absence of such circumstances.

78. In Andhra Pradesh Civil Liberties Committee and Ors. v. State of Andhra Pradesh and Others, 2007, the High Court directed, amongst other things, that when an "encounter" takes place, the police shall register an FIR and that the plea of self-defence cannot be conclusively determined during investigation.

79. Section 157 to 167 of the CrPC, 1973. Chapter XII- Information to the Police and their Powers to Investigate. Available at https://www.writinglaw.com/chapter-xii-154-176-of-crpc-information-to-the-police-and-their-powers-to-investigate/.

80. Section 154 CrPC- Information in cognizable cases -

(1) Every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read Over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

(2) A copy of the information as recorded under sub- section (1) shall be given forthwith, free of cost, to the informant.

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in subsection (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be

made by any police officer subordinate to him, in the manner provided by this Code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence;

81. Lalita Kumari v. Govt of UP and Ors., 2013. Available at https://indiankanoon.org/doc/10239019/?__cf_chl_jschl_tk__=pmd_RpTGfx9HKYqX7GxSJtUmOyMmgkrRgjlqrDUshFtb6QI-1631244897-0-gqNtZGzNAiWjcnBszQil ;

82. Writ Petition (Criminal) No. 348/2019. Available at https://indiankanoon.org/doc/65295726/.

83. Section 46 CrPC - Arrest how made.

(1) In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action.

(2) If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

(3) Nothing in this section gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

84. See Nirmal Singh Kahlon v. State of Punjab (2009) 1 SCC 441, where the Supreme Court held that a second FIR for the same offence, incident or occurrence is permissible only in situations where new facts were discovered after the investigation of the first FIR. Available at https://indiankanoon.org/doc/1041213/.

85. T.T. Antony v. State of Kerala and Ors. [(2001) 6 SCC 18]. Available at https://indiankanoon.org/doc/1974324/.

86. Babubhai v. State of Gujarat, [(2010) 12 SCC 254]. Available at https://indiankanoon.org/doc/1164619/.

87. Section 173 CrPC.

88. Bhagwant Singh v. Commr. of Police, [(1985) 2 SCC 537]. Available at https://indiankanoon.org/doc/118375/.

89. Pooja Pal v. Union of India, [(2016) 3 SCC 135]. Available at https://indiankanoon.org/doc/14591172/?__cf_chl_jschl_tk__=pmd_68VRbNHLS2KRWNsLv8vTewBkcveJydCANyfZhG9ypms-1631247167-0-gqNtZGzNAiWjcnBszQoR.

90. [(2019) 17 SCC 1]. Available at https://indiankanoon.org/doc/131202146/.

91. Sahu, M. and Vishwanath, A. (2020, July 11). Encounter impunity on record: 74 probes complete in UP; police get clean chit in all. Indian Express. https://indianexpress.com/article/india/74-probes-complete-in-up-police-get-clean-chit-in-all-6500071/.

92. [(2009) SCC Online AP 50]. Available at https://indiankanoon.org/doc/325644/.

93. AP Police Officers Association v. APCLC, 2019. Available at https://indiankanoon.org/doc/148359734/.

94. Bhagwant Singh v. Commr. of Police, [(1985) 2 SCC 537.] Available at https://indiankanoon.org/doc/118375/.

95. AP Police Officers Association v. APCLC, 2019. Available at https://indiankanoon.org/doc/148359734/; APCLC v. State of AP, 2007. Available at https://indiankanoon.org/doc/325644/.

96. Mohan Lal v. State of Punjab, [(2018) 17 SCC 627]. Available at https://indiankanoon.org/doc/38505268/.

97. Section 176. Inquiry by Magistrate into cause of death.-

(1A) Where,-

(a) Any person dies or disappears, or

(b) rape is alleged to have been committed on any woman,

While such person or woman is in the custody of the police or in any other custody authorised by the Magistrate or the Court, under this Code in addition to the inquiry or investigation held by the police, an inquiry shall be held by the Judicial Magistrate or the Metropolitan Magistrate, as the case may be, within whose local jurisdiction the offence has been committed.

98. See Niranjan Singh v. Prabhakar Rajaram Kharote, (1980) 2 SCC 559, pg 562.

99. Kasthuri v. State of T.N, [(2014) SCC Online Mad 12579]- para 20, 23, 24, 32, 33, 40; Available at: http://tnsja.tn.gov.in/juddeci/100.pdf

100. An Executive Magistrate is a civil officer, appointed by the State Government. He has only administrative and limited law enforcement powers.

101. The Law Commission in its 152nd report published in 1994 had observed that Executive Magistrates or the District Collectors only looked at these investigations as formalities and "the findings did not inspire confidence".

102. Shantha, S. (2020, July 07). Most States have Flouted Mandatory Judicial Inquiry into Custodial Deaths for 15 Years. The Wire.

103. Human Rights Watch. (2016, December 19). Lack of Accountability. In Bound by Brotherhood: India's Failure to End Killings in Police Custody. Available at: https://www.hrw.org/report/2016/12/19/bound-brotherhood/indias-failure-end-killings-police-custody.

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105. Kasthuri v. State of T.N, [(2014) SCC Online Mad 12579]- para 22 and 23; Available at: http://tnsja.tn.gov.in/juddeci/100.pdf

106. National Human Rights Commission. (n.d.). Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of police action. Available at https://nhrc.nic.in/sites/default/files/Guidelines_conducting_Magisterial_Enquiry_in_cases_of_CD_or_police_action.pdf.

107. Andhra Pradesh Civil Liberties Committee v. State of Andhra Pradesh. [2007 (5) ALT 639]. Available at https://indiankanoon.org/doc/325644 .

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111. National Human Rights Commission. (n.d.). Guidelines regarding conducting of Magisterial Enquiry in cases of Death in Custody or in the course of police action. Available at https://nhrc.nic.in/sites/default/files/Guidelines_conducting_Magisterial_Enquiry_in_cases_of_CD_or_police_action.pdf

112. Extra Judicial Execution Victim Families Association (EEVFAM) & Ors. v. Union of India (UOI) & Ors [(2016) 14 SCC 578 (2)]. Available at https://indiankanoon.org/doc/83144198/

113. Das, A. (2017, November 19). Criminals will be jailed or killed in encounters: CM Yogi Adityanath. Times of India. https://timesofindia.indiatimes.com/city/ghaziabad/criminals-will-be-jailed-or-killed-in-encounters-cm-yogi-adityanath/articleshow/61707953.cms

114. NH Web Desk. (2017, November 24). NHRC objects to Yogi's 'encounter' statement, asks for explanation. National Herald. Available at https://www.nationalheraldindia.com/national/an-encounter-of-freedom

115. National Human Rights Commission. (2018, February 05). NHRC notice to the Government of Uttar Pradesh over reports of fake encounter in NOIDA on 3rd February 2018. NHRC Press Release. Available at https://nhrc.nic.in/press-release/nhrc-notice-government-uttar-pradesh-over-reports-fake-encounter-noida-3rd-february

116. NHRC Case No.10824/24/0/2018-AFE.

117. NHRC order dated 09.05.2018 in Case No. 10824/24/0/2018-AFE registered on Complaint of Henri Tiphagne and Others in respect of Noor Mohammad@Haseen Mota, Akbar, Waseem, Naushad, Jaan Mohammad, Ehsaan, Gurmeet and 10 others. See Annexure 1.

118. There has been no response by the NHRC to the letters written by the complainants to get information about the status of this case which is not available in the public domain.

119. NHRC order dated 5.11.1996 in File No.s 234 (1)/93-94/NHRC; 234 (2)/93-94/NHRC; 234 (3)/93-94/NHRC; 234 (5)/93-94/NHRC; 234 (6)/93-94/NHRC, in complaints filed by Andhra Pradesh Civil Liberties Committee.

120. NHRC order dated 28.11.2019 in Case No. - 30160/24/30/2017-AD.

121. NHRC order dated 15.03.2021 in Case No. - 30160/24/30/2017-AD.

122. NHRC order dated 07.11.2019 in Case No. 32457/24/57/2017-ED

123. People's Union of Civil Liberties v. Union of India & Ors. [(2014) 10 SCC 635]. Available at https://indiankanoon.org/doc/25812914/.

124. NHRC order dated 30.01.2019 in Case No. 202/24/54/2018-ED

125. NHRC Case No. 29527/24/54/2017-ED

126. NHRC Order dated 9.5.2018 in Case No. 10824/24/0/2018-AFE registered on Complaint of Henri Tiphagne and Others in respect of Noor Mohammad@Haseen Mota, Akbar, Wnaseem, Naushad, Jaan Mohammad, Ehsaan, Gurmeet and 10 others. (Annexure 1).

127. Order dated 7.11.2019 passed in Case No. 32457/24/57/2017-ED.

128. Order dated 7.11.2019 passed in Case No. 32457/24/57/2017-ED.

129. NHRC Order dated 28.11.2019 in Case No. - 30160/24/30/2017-AD.

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131. NHRC order dated 30.01.2019 in Case No. 29962/24/54/2017-ED

132. NHRC order dated 30.01.2019 in Case No. 202/24/54/2018-ED

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137. Meer Hassan v. SHO Chaman Singh Chawda & Ors. (Case No. 809/17)

138. Order dated 16.05.18 in Meer Hassan v. State of U.P. & Ors. [Criminal Revision No. 1222/2018], Allahabad High Court.

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141. Available at https://www.mha.gov.in/sites/default/files/Documents_PolNGuide_finalWPS_08072019.pdf.

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143. People's Union of Civil Liberties v. Union of India & Ors. [(2014) 10 SCC 635]. Available at https://indiankanoon.org/doc/25812914/.

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145. A.P. Civil Liberties Committee (APCLC) v. Govt. of A.P. [(2009) SCC OnLine AP 50]. Available at https://www.casemine.com/judgement/in/56ea70ae607dba369a6ee67a.

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150. Sunita Devi v. State of Bihar. [2005 (1) SCC 608]. Available at https://indiankanoon.org/doc/1753926/.

151. People's Union of Civil Liberties v. Union of India & Ors. [(2014) 10 SCC 635]. Available at https://indiankanoon.org/doc/25812914/.

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153. National Human Rights Commission (n.d.). NHRC announced an Interim Relief of Rs. 2 crore 80 lakh to 89 victims of atrocities by Joint Special Task Force (JSTF) in the States of Karnataka and Tamil Nadu [Press release]. https://nhrc.nic.in/press-release/nhrc-announced-interim-relief-rs-2-crore-80-lakh-89-victims-atrocities-joint-special and Subramanian, T.S. (2005, December 16). A Sharp Indictment. Frontline. https://frontline.thehindu.com/other/article30207561.ece

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162. See - Ahuja, N.B. (2019, September 7). Justice by the gun. The Week. https://www.theweek.in/theweek/cover/2019/09/06/justice-by-the-gun.html; Rai, S. (2017, September 28). In midnight encounter, cops gun down man wanted in over 25 cases. The Times of India. (https://timesofindia.indiatimes.com/city/meerut/in-midnight-encounter-cops-gun-down-man-wanted-in-over-25-cases/articleshow/60859909.cms; Chatterjee, D. (2018, March 04). Man Shot In An Encounter; UP Police Say, He Carried A Bounty Of Rs 50,000. NDTV. https://www.ndtv.com/india-news/man-shot-in-an-encounter-up-police-say-he-carried-a-bounty-of-rs-50-000-1819309.

163. NHRC Order dated 09.05.2018 in Case No. 10824/24/0/2018-AFE registered on Complaint of Henri Tiphagne and Others in respect of Noor Mohammad@Haseen Mota, Akbar, Waseem, Naushad, Jaan Mohammad, Ehsaan, Gurmeet and 10 others. See Annexure 1.

164. Sakiri Vasu v. State of U.P. (2008) 2 SCC 409. Available at - https://indiankanoon.org/doc/1836621/

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167. Prakash Kadam and Ors. v. Ramprasad Vishwanath Gupta and Anr. [(2011) 6 SCC 189]. Available at - https://indiankanoon.org/doc/1979158/.

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NATIONAL HUMAN RIGHTS COMMISSION
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NOTICE

Case No. **10824/24/0/2018-AFE**
To
THE DIRECTOR GENERAL OF POLICE
GOVERNMENT OF UTTAR PRADESH, LUCKNOW

WHEREAS the complaint/intimation dated 07/05/2018 received from HENRI TIPHAGNE AND OTHERS in respect of NOOR MOHAMMAD@ HASEEN MOTA, AKBAR, WASEEM, NAUSHAD, JAAN MOHAMMAD, EHSAAN, GURMEET, AND 10 OTHERS. was placed before the Commission on 09/05/2018 .

AND WHEREAS upon perusing the complaint the Commission has passed the following

The present complaint, based on the statements of nine families, names of one of the members are stated above, alleging extra judicial killing of their kin who have been residing in the State of Uttar Pradesh whereby it has been alleged that under the suspicious circumstances the incidents of extra judicial killings have taken place where strikingly similar pattern was followed debunking allegedly genuine encounter narrative of the police.

It has been alleged in the complaint that the State of Uttar Pradesh has unleashed a wave of victimization of innocent people under the guise of allegedly maintaining law and order. According to media reports and independent fact findings, there are as many as 50 cases of encounter killings in Uttar Pradesh since March 2017. It has further been alleged that since present dispensation came in Govt. in the state of Uttar Pradesh allegedly 1200 encounters have taken place, many victim families harassed and victimized by police when they have filed police complaints against those brutal extra judicial killings. It is also stated that situation leads to complete impunity for the police in the State sponsored killings, in as much as, no protection, compensation or procedural remedies for the victims are available to the families who are having no defense to protect themselves from the ghastly acts alleged to have performed by the State machinery.

ANNEXURE 1 NHRC Order dated 9th May 2018 in Case No. 10824/24/0/2018-AFE

ANNEXURE 1

The complaint further averred that the Hon'ble Supreme Court and NHRC from time to time issued specific guidelines to prevent such killings for holding police and state authorities to account procedurally. Nevertheless, this illegal execution continues, as alleged, with seeming impunity to the violators. The complaint further reveals that according to official data released by the police there are 1144 encounters in the State of Uttar Pradesh from March 2017 till January 2018 in which 34 criminals were got killed and 2744 were arrested.

The complainants herein are the NOK of the deceased who purported to have killed in the extra judicial manner by the state functionary. According to the complainants, the extra judicial killings of their kin constitute gross violation of right to life, a non derogable right enshrined in the constitution and in international human rights law. In the complaint it has been stated that the trends which can be seen from the facts and circumstances of each of the police encounters it would be apparent that alleged police encounters are not spontaneous rather there are signs of pre- meditated planning behind the encounter storey and a repetition of sequence of events in the police version. According to the complainants strikingly there are similar circumstances in most of the alleged encounter killings like abduction of victims before the incident. Seven out of nine cases mentioned in the complaint, the eye witness accounts tell of police in uniform or in plain clothes abducting the victims a day before they are allegedly killed in an armed confrontation.

It is alleged that in three out of nine cases, the victim family was aware that the victim was in police custody and they were first shown to have absconded from custody and thereafter police receive information about the victims reported illegal activities, they are then shown as being killed in an alleged encounter. In 7 out of 9 cases there are torture marks on the body of the victims. Postmortem reports state that the bodies had tattooing marks and blackening of skin around bullet holes indicating that the shooting had taken place at very close range. 6 out of 9 cases demonstrate hits to the body, head, face or chest which in most of the shoot-out is unlikely to happen. In 5 out of 9 cases police put victims on most wanted list with rewards on their heads, just after the incidents. Sequence of events which lead to encounter stated by the police in FIRs recorded by them tend to be identical. The pattern of injuries received by police officials also show similar trend of minimal injuries. In all cases, there is / are unknown criminal(s) who manages to run away in an unbelievable fashion.

It is alleged in the complaint that there is lack of public eye witnesses to the encounter in the police claim but actually there were many witnesses who had seen the victims being taken away by police just prior to being killed in encounter.

Allegations of police reprisal has been mentioned in the complaint whereby it is stated that families and witnesses account or statement is neither recorded nor investigated, rather

serious of threats in the form of direct threats or fabricating false cases against witness, relatives are common in most of the cases.

The complaint unreveals the violation of due process by police officials investigating the alleged instances of police encounters which includes registration of First Information Report as none of the cases, has the FIR been filed against the concerned police officers who used firearm that led to death in alleged encounter. In most of the cases complained above, victim family was not informed by the state authorities at the earliest rather information reached to the family through villagers, news reports. In none of the 9 cases, the investigation is transferred to independent bodies such as state CID departments, forensic examination of the crime scene to collect evidentiary material has not been done. Postmortem reports in most of the cases have not been provided to the victim family which is contrary to the procedure established by law.

In the premises, the complainants named above, has inter alia prayed for an independent enquiry into the nine cases of alleged police encounter by investigation team of the Commission who may record the statements of affected families and also to examine/enquire each of the cases independently. They have also prayed for granting relief under section 18 of the Protection of Human Rights Act.

The Commission has also received a separate complaint by Members of the Civil Society Organizations against the spate of extra judicial killings in Uttar Pradesh by police in the last year. The complainants herein are Henri Tiphagne, People's Watch; Harsh Mander, Aman Biradari Trust; Akram Akhtar Chaudhary, Afkar India Foundation; Sajjad Hassan, Citizen Against Hate/Misaal; Suhail K K, Quill Foundation; Mathew Jacob, Human Rights Defenders Alert – India; Suroor Mander, Aman Biradari Trust; Nadeem Khan, United Against Hate; Devika Prasad, Commonwealth Human Rights Initiative; Manisha Sethi, Jamia Teacher's Solidarity Association; Rajeev Yadav, Rihai Manch and Mushfique Raza, Association of Protection of Civil Rights.

The complaint says that complainants came to know that nine families of the deceased victims from Uttar Pradesh have filed a complaint with the Commission requesting the Commission to initiate independent and fair enquiries into their cases of alleged encounter killings. The said complaint further states that the Members of Civil Society being the complainant herein also reiterate the request of the affected families and also through this complaint they want to bring to the notice of the Commission eight more instances of extra judicial killings in Uttar Pradesh. The complaint speaks that victim families are harassed and victimized by the police when they have made efforts to access justice, thus leading to a situation of complete impunity for the police in the alleged encounter killings and no protection, compensation or procedural redress for the victim families. The instant complaint also narrated same facts regarding suspicion and doubt about the alleged encounter killings in 8 cases other than the cases of 9 victim families mentioned in the

ANNEXURE 1

above noted complaint. In the instant complaint also the complainants being the Member of Civil Society have prayed for similar relief for constituting an investigating team of the Commission for fact finding enquiry independently and to come to a conclusion whereby relief under section 18 of the PHR could be granted to the NOK of victims of those 8 extra judicial killings as mentioned in the second complaint.

The Commission has carefully gone through both the complaints, one being 9 victim families alleging extra judicial killings of their near and dear ones and similarly the complaint of the Members of the Civil Society also narrates the alleged killings of arms confrontation which according to them are eight instances of extra judicial killings. Allegations so put forth in both the cases are similar in nature and arising out of same sets of facts and against the same respondent state. Therefore, the Commission has clubbed both the complaints for sake of brevity and convenience.

Both the complaints have been supported with various documents which prima-facie lead to show that there may be chances of failure on the part of the state to adhere to the guidelines issued from time to time by the Hon'ble Supreme Court as also this Commission. Therefore, there may be chances of exceeding the jurisdiction by the police authorities of the state of Uttar Pradesh at the time of alleged encounter killings.

The Commission has already taken suo-motu cognizance of the matter vide its proceedings dated 22.11.2017 when a news item published in The Times of India under caption "Criminals will be jailed or killed in encounters: CM Yogi Adityanath" had come to its notice.

The Commission after considering the facts stated in the news report observed that the police personnel in the state of Uttar Pradesh appears to be feeling free, misusing their powers in the light of an undeclared endorsement given by the higher ups. It further appears that they are using their privileges / legal authority to settle scores with the people which in a civilized society, where rule of law is fundamental edifies cannot be accepted. The police force is to protect the people and this kind of alleged encounter killings would send a wrong message to the society by creating an atmosphere of fear which is not the correct way to deal with the crime or law and order as the case may be.

The report called for from the Government of Uttar Pradesh has been received and the same has been considered by the Commission on 4.5.2018. The Commission has directed the Chief Secretary and the DGP of the State of Uttar Pradesh to submit all the requisite reports to the Commission in 23 cases mentioned in their report.

Considering the gravity of the matter, the Commission requests its DG(I) to constitute an investigating team of five members, consisting of one SSP, two Dy.SPs and two Inspectors to make the fact finding enquiry of all the 17 cases where alleged encounter killings had

taken place by recording the statements of affected families and other necessary examination relating to the alleged incident of encounter deaths and to submit report within four weeks. The team to be constituted forthwith. Out of these 17 cases, 15 are already registered with the Commission in which reports have been called for. Rest two cases are hereby registered by issuing notices to the Chief Secretary and the DGP of the State of Uttar Pradesh with a direction to submit detailed reports within six weeks.

The Commission also directs DGP of the State of Uttar Pradesh to give necessary directions to the concerned investigating officers in all the 17 cases of alleged encounter killings to submit the status of investigation and produce documents pertaining to cases mentioned above before the Commission and those documents must particularly include (i) FIRs registered in the cases; (ii) relevant chargesheets; (iii) General / Daily Dairy register entry of the relevant Police Station, of the day of incident; (iv) Wireless log book record of the relevant PS (or district police wireless HQ, where such log is maintained) of the day of incident; (v) log book records of the day, of govt. vehicles used by all police officers engaged in the said encounters; (vi) all Details Records (CDR) of mobile phones used by the deceased, any by all police officers engaged in the encounter (date range; one week prior to date of encounter to one week following) within six weeks.

Put up after eight weeks.

NOW THEREFORE TAKE NOTICE that you are required to submit the requisite information / Report within 6 weeks from the date of receipt of this notice.

TAKE FURTHER NOTICE that in default the Commission may proceed to take such action as it deems proper.

Given under my hand and seal of the Commission, this the day of 09 May 2018.

(BY ORDER)

Assistant Registrar (Law)

Encl: Copy of the complaint.

Note --> 1. The information / report shall be furnished only by the authority which is called upon to do so.

2. Please quote the **Case No.** referred above in all future correspondence / reports.

CC to:

Case No. **10824/24/0/2018-AFE**
NNNN
NNNN

राष्ट्रीय मानव अधिकार आयोग
National Human Rights Commission

ANNEXURE 1

ANNEXURE 2

Table highlighting statements of Government and Police Officials in support of "police encounters".

Date	Designation	Content/Quote
3 June 2017	Chief Minister, UP (Yogi Adityanath)	Our police would not hesitate to 'knock down' the criminals if they did not mend their ways. "Agar apradh karenge, toh thok diye jayenge" (If they commit crimes, we will knock them down)[1]
16 September 2017	Deputy Chief Minister, UP (Keshav Prasad Maurya)	Today criminals are terrified with the thought that either they will have to give up crime or leave U.P., or maybe even leave this world.[2]
16 September 2017	Chief Minister, UP (Yogi Adityanath)	Police in UP will now respond to a bullet with a bullet. Unlike the previous government, I have given full authority to the force to deal with criminals in the most appropriate way possible. This stringent way of dealing with criminals has them panicking. Giving full authority to the force has boosted their morale and they are working better, with no political interference. The culprits will not be spared at any cost.[3]
16 September 2017	Additional Director General of Police, Law and Order, UP (Anand Kumar)	Police action had rattled the criminals... the encounters were conducted in the interest of society as per the "desires of the government, expectations of public and according to the constitutional and legal power afforded to the police"[4]
19 November 2017	Chief Minister, UP (Yogi Adityanath)	We will make life difficult for criminals. They will have only two places to go: either they will be sent to jail, or they will be killed in police encounter. "We have to use force to stop criminals. Criminals nowadays are fleeing the state. We will make life miserable for those who do not believe in the rule of law, those who shoot at innocent traders, kill

[1] India TV Politics Desk. (2017, June 3). *'Thok Denge': We will knock down criminals in UP, says UP CM Yogi Adityanath in Aap Ki Adalat.* India TV. https://www.indiatvnews.com/politics/national-thok-denge-we-will-knock-down-criminals-in-up-says-up-cm-yogi-adityanath-in-aap-ki-adalat-384587

[2] Rashid, O. (2017, September 16). *15 encounter deaths in Yogi's U.P.* The Hindu. https://www.thehindu.com/news/national/other-states/15-encounter-deaths-in-yogis-up/article19700184.ece

[3] Ahmad, Q.F. (2017, September 16). *A Bullet for a Bullet Will Make UP Crime-Free, Says CM Yogi Adityanath.* News18. https://www.news18.com/news/india/a-bullet-for-a-bullet-will-make-up-crime-free-says-cm-yogi-adityanath-1519947.html

[4] Rashid, O. (2017, September 16). *15 encounter deaths in Yogi's U.P.* The Hindu. https://www.thehindu.com/news/national/other-states/15-encounter-deaths-in-yogis-up/article19700184.ece

		innocent people and destroy the respect and integrity of women.[5]
15 February 2018	Chief Minister, UP (Yogi Adityanath)	Everybody knows who gave patronage to criminals. A total of 40 dreaded criminals have been gunned down in 1200 encounters, and this will continue. It is unfortunate that some people are showing sympathy toward criminals. This is dangerous for democracy.[6]
7 August 2018	Police officials of PS Basai Jagner, Agra (Station House Officer Jagdamba Prasad & Sub-Inspector Balbir Singh)	"How to fix innocent people in a case and also getting them killed in encounters. The same could cost around Rs 5-6 lakh or above. SHO Jagdamba Prasad is allegedly heard saying that the position of SO (station officer) is so tempting that one is ready to do anything for it, be it "killing or even bribing"... could do anything if he got the post of police station in-charge."[7]
4 July 2018	Additional Director General of Police (Law and order), UP (Anand Kumar)	UP Government's response to the notice issued by the Supreme Court of India: "There is nothing to hide and Yogi government took the right decision to control crime in the state. Criminals were now being dealt with iron fist and the government would not tolerate any criminal activity in the state. Just killing of 59 criminals of 2000 dreaded ones cannot be termed that the UP Police was eliminating criminals in the name of law and order."[8]
11 September 2018	Director General of Police, UP (O.P Singh)	"Police encounters are part of a well chalked out "strategy" to arrest hardened criminals in the state...encounters are a police strategy and not a state policy and that the criminals who have been engaged by the state police in encounters are either wanted criminals or the ones who have been at large for a long time and have indulged in heinous crimes. We do not call it encounter but police engagement.

[5] Scroll Staff. (2017, November 19). *Uttar Pradesh CM Yogi Adityanath warns the criminals, says they will either be jailed or killed in encounters.* Scroll.in
https://scroll.in/latest/858444/uttar-pradesh-cm-adityanath-warns-criminals-says-they-will-either-be-jailed-or-killed-in-encounters

[6] PTI. (2018, February 15). *Police encounters won't stop in Uttar Pradesh: Yogi Adityanath.* The Indian Express.
https://indianexpress.com/article/india/police-encounters-wont-stop-in-uttar-pradesh-yogi-adityanath-5065305/

[7] Express News Service. (2018, August 06). *Sting operation: Three Agra cops suspended for discussing 'fake encounters'*. The Indian Express.
https://indianexpress.com/article/cities/lucknow/sting-operation-three-agra-cops-suspended-for-discussing-fake-encounters-5294969/

[8] PNS. (2018, July 04). *SC asked UP Govt to submit its report on police encounters.* The Pioneer.
https://www.dailypioneer.com/2018/state-editions/sc-asked-up-govt-to-submit-its-report-on-police-encounters.html

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		We are engaged with the criminals in a very professional and strategic manner."[9]
5 March 2021	Pawan Jaiswal, MLA, BJP	The MLA has urged Bihar chief minister Nitish Kumar to adopt the 'Uttar Pradesh's encounter model' to control crimes in the state. Jaiswal, who was backed by more MLAs, said that vehicles of criminals should overturn in Bihar the same way it happens in the neighbouring state.[10]
18 March 2021	Additional Director General of Police, (Law and Order), UP (Prashant Kumar)	"Under the government's policy of zero tolerance against crime and criminals, extensive operations were undertaken against ganglords and mafia elements since 2017. Attack on cops by criminals will not be tolerated. We gave a befitting reply to criminals who attacked cops. Slapping of the National Security Act in 199 cases created fear amongst criminals. Over 14,000 criminals have surrendered in the last three years."[11]
13 August 2021	Additional Director General of Police (Law and Order), UP (Prashant Kumar)	He "claimed that the high number of injuries in police encounters indicates that killing criminals is not the primary objective of the police but arresting them. Kumar said that "till date, no constitutional institution has said anything adverse against UP Police encounters" and adds that every encounter goes through a magisterial inquiry and that there are set procedures based on Supreme Court guidelines as to what to do if an encounter takes place."[12]

[9] PTI. (2018, September 11). *Police encounters are part of strategic operations to nab hardened criminals: UP DGP.* The Economic Times. https://economictimes.indiatimes.com/news/politics-and-nation/police-encounters-are-part-of-strategic-operations-to-nab-hardened-criminals-up-dgp/articleshow/65768608.cms

[10] Thakur, R.K. (2021, March 05). *BJP MLAs demand adoption of 'UP encounter model' to control crimes in Bihar.* The New Indian Express. https://www.newindianexpress.com/nation/2021/mar/05/bjp-mlas-demand-adoption-of-up-encounter-modelto-control-crimes-in-bihar-2272601.html

[11] TNN. (2021, March 18). *One criminal killed every 10th day in encounter in last 4 years.* The Times of India. https://timesofindia.indiatimes.com/city/lucknow/1-criminal-killed-every-10th-day-in-encounter-in-last-4-yrs/articleshow/81559478.cms

[12] The Wire Staff. (2021, August 13). *Under Adityanath, UP Police Has Injured Over 3,300 In 'Encounters', Finds Report*. The Wire. https://thewire.in/government/under-adityanath-up-police-has-injured-over-3300-in-encounters-finds-report

Date	Media reports
15 April 2018	UP police suspended one of its officers, Suneet Kumar Singh, SHO of Mauranipur police station, after his audio went viral on social media where he is heard advising a criminal to "manage" two BJP leaders to avoid his own death in a "police encounter".[1]
6 August 2018	On August 6, 2018, three Agra policemen - SHO Jagdamba Prasad, SI Balbir Singh of PS Basai Agner and SI Sarvesh Kumar of PS Chitrahat – were suspended after they were allegedly caught on camera speaking about fake "encounters", in a sting operation by a television news channel. As per a report published in the Indian Express, SI Sarvesh Kumar is heard explaining in the clip, "how to "fix" innocent people in a case and getting them killed in "encounters". He is also allegedly heard saying that the same could cost around Rs 5-6 Lakhs or more. SHO Jagdamba Prasad is allegedly heard saying that the position of a SO (Station Officer) is so tempting that one is ready to do anything for it, be it "killing or even bribing". Moreover, SI Barbir Singh is purportedly heard saying he could do anything if he got the post of police station in-charge."[2]
28 August 2018	On August 28, 2018, a series of video clips surfaced showing UP police personnel shooting in the leg of an alleged criminal in Noida, under the jurisdiction of SSP Ajay Pal Sharma. According to the police, on August 27, 2018 accused Firoz, who was injured in the police firing, and one of his accomplices had stolen a Hyundai Accent car from a bus stop near Kailash Hospital in Greater Noida. According to a Times of India Report published on August 29, 2018, "In the video, pedestrians, cyclists, cars, heavy vehicles and even an ambulance can be seen passing by. Suddenly, three gunshots are heard. The video doesn't show Firoz possessing any weapon or firing at the police, though the cops claim otherwise."[3]

[1] JKR Staff. (2018, April 15). *Manage BJP leaders to avoid death in police counter: UP cop suspended after sensational audio goes viral.* Janta ka Reporter. https://www.jantakareporter.com/india/manage-bjp-leaders-to-avoid-death-in-police-counter-up-cop-suspended-after-sensational-audio-goes-viral/180642/

[2] Express News Service. (2018, August 06). *Sting operation: Three Agra cops suspended for discussing 'fake encounters'.* The Indian Express. https://indianexpress.com/article/cities/lucknow/sting-operation-three-agra-cops-suspended-for-discussing-fake-encounters-5294969/

[3] Dua, R. (2018, August 29). *Video clips show Noida encounter live, man shot in leg.* The Times of India. https://timesofindia.indiatimes.com/city/lucknow/video-clips-show-noida-encounter-live-man-shot-in-leg/articleshow/65587617.cms

ANNEXURE 3 Table on media reports showing "encounters" as premeditated and planned

ANNEXURE 4

Table highlighting statements of Government and Police Officials in support of "police encounters".

Guidelines issued by the NHRC on Extrajudicial Killings

1. NHRC guideline on December 14, 1993

NHRC directed agencies to report matters relating to custodial deaths and rapes within 24 hours. (At that time, death in police action was classified under 'custodial deaths').

2. NHRC guideline on August 10, 1995

NHRC advised all Chief Ministers of the necessity of introducing video-filming of Post Mortem examination from 1st October 1995 onwards to avoid distortion of facts.

3. NHRC guideline on March 27, 1997

NHRC recommended to all Chief Ministers that all States shall adopt the "Model Autopsy Form" and "Additional Procedure for Inquest" prepared by the NHRC based on discussions with experts and the UN Model Autopsy Protocol.

4. NHRC guideline on March 29, 1997

NHRC issued Guidelines recommending the procedure to be followed by States and Union Territories with regard to encounter deaths. It was recommended, inter alia, that:

a. Deaths should be entered in an appropriate register of the Police Station;

b. It should be treated as a cognizable offence and investigation should commence;

c. It should be investigated by an independent agency such as the state CID, and not by officers of the same Police Station;

d. Compensation to the victim's dependents should be considered in cases ending in conviction.

5. NHRC guideline on December 2, 2003

NHRC introduced the following major changes/additions to the previous guidelines to introduce greater transparency and accountability:

a. If a specific complaint was made against the police, an FIR must be lodged;

b. A Magisterial Inquiry was not mandatory in every encounter death;

c. It also required the State Director General of Police to send a six-monthly

statement to details of all deaths in police action to the NHRC.

7. NHRC guideline on May 12, 2010

NHRC further revised the Guidelines containing the following major changes/additions:

a. The Magisterial Inquiry was required to be completed within three months;

b. Every death in police action was to be reported to the NHRC by the District Superintendent of Police (SP) within 48 hours;

c. A second report was to be sent to the NHRC by the District Superintendent of Police (DSP) within three months, with Post-Mortem Report, Inquest Report, Ballistic Report and findings of the Magisterial Inquiry.

Guidelines issued by the Supreme Court and other Judicial pronouncements on Extrajudicial Killings

1. D.K. Basu v. State of West Bengal [(1997) 1 SCC 416]

Article 21 of the Constitution includes within itself a guarantee against torture and assault by the State or its functionaries. Any form of torture or cruel, inhuman or degrading treatment would fall within the ambit of Article 21 of the constitution, whether it occurs during investigation, interrogation or otherwise.

The challenge of terrorism must be met with innovative ideas and approaches. State terrorism is no answer to combat terrorism. State terrorism would only provide legitimacy to 'terrorism'. That would be bad for the State, the community and above all for the Rule of law. The State must, therefore, ensure that various agencies deployed by it for combating terrorism act within the bounds of law and not become a law unto themselves. That the terrorist has violated the human rights of innocent citizens may render him liable for punishment, but it cannot justify the violation of his human rights except in the manner permitted by law.

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2. Challa Ramkonda Reddy and Ors. v. State of Andhra Pradesh [AIR 1989 AP 235]

The right to life guaranteed by Article 21 is so fundamental and basic that no compromise is possible with it. It is 'non-negotiable'. The state has no right to take any action which will deprive a citizen of the enjoyment of this basic right except in accordance with a law which is reasonable, fair and just. Article 21 does not recognize any exception, and no such exception can be read into it by reference to clause (1) of Article 300. Where a citizen has been deprived of his life or liberty, otherwise than in accordance with the procedure prescribed by law, it is no answer to say that the said deprivation was brought about while the officials of the State were acting in the discharge of the sovereign functions of the State.

3. People's Union for Civil Liberties vs. Union of India (UOI) and Ors. [(1997) 3 SCC 433]

The Supreme Court criticized the practice of fake encounters as administrative liquidation and held that if the police had the information that terrorists were gathering at a particular place and if they had surprised them and arrested them, the proper course for them was to deal with them according to law. "Administrative liquidation" was certainly not a course open to them. It was a case where two villagers, declared as terrorists, were caught by police and were shot and killed in an "encounter".

4. Extrajudicial Execution Victim Families Association (EEVFAM) and Ors. Vs. Union of India (UOI) and Ors [(2013) 2 SCC 493]

The Court rejected the plea of the State that the Court shall only consider the matter vicariously through the agency of NHRC and observed that when the right to life of a citizen is under threat then the Court is duty-bound to ascertain the truth, to stand with the individual and to prohibit the State from violating the rights. The Court held in para 4 and 11 of the judgement that

> *"4 .... Any indication of the violation of the right to life or personal liberty would put all the faculties of this Court at high alert to find out the truth and in case*

the Court finds that there has, in fact, been a violation of the right to life and personal liberty of any person, it would be the Court's bounden duty to step-in to protect those rights against the unlawful onslaught by the State. We, therefore, see no reason not to examine the matter directly but only vicariously and second-hand, through the agency of the NHRC."

"11. .... The lives lost in the fight against terrorism and insurgencies are indeed the most grievous loss. But to the State, it is not open to cite the numbers of policemen and security forces killed to justify custodial death, fake encounter or what the Court had called "Administrative liquidation". It is simply not permitted by the Constitution and in a situation where the Court finds a person's rights, especially the right to life under assault by the State or the agencies of the State, it must step in and stand with the individual and prohibit the State or its agencies from violating the rights guaranteed under the Constitution."

5. People's Union of Civil Liberties v. State of Maharashtra [(2014) 10 SCC 635]

The Supreme Court issued guidelines to be followed in the matters of investigating police encounters in the cases of deaths and injuries as the standard procedure for thorough, effective and independent investigation. The Court has observed that the "encounter" philosophy is a criminal philosophy. The guidelines are: -

1. Whenever the police is in receipt of any intelligence or tip off regarding criminal movement or activities pertaining to the commission of grave criminal offence, it shall be reduced into writing in some form (preferably into case diary) or in some electronic form. Such recording need not reveal details of the suspect or the location to which the party is headed. if such intelligence or tip off is received by a higher authority, the same may be noted in some form without revealing details of the suspect or the location.

2. If pursuant to the tip-off or receipt of any intelligence, as above, encounter takes places and firearm is used by the police party and as a result of that, death occurs, an FIR to that effect shall be registered and the same shall be forwarded to the Court under Section 157 of the Criminal Procedure Code without delay. While forwarding the report

under Section 157 of the Code, the procedure prescribed under Section 158 of the Code shall be followed.

3. An independent investigation into the incident/encounter shall be conducted by the CID or police team of another police station under the supervision of a senior officer(at least a level above the head of the police party engaged in the encounter). the team conducting inquiry/investigation shall, at minimum, seek:

a. To identify the victim; colour photographs of the victim should be taken;

b. To recover or preserve evidentiary material, including bloodstained earth, hair, fibers and threads etc. related to the death;

c. To identify scene witnesses with complete names, addresses and telephone numbers and obtain their statement (including the statements of police personnel involved) concerning the death;

d. To determine the cause, manner, location (including preparation of rough sketch of topography of the scene and, if possible, photo/video of the scene and any physical evidence) and time of death as well as any pattern or practice that may have brought about the death;

e. It must be ensured that intact fingerprints of the deceased are sent for chemical analysis. Any other fingerprints should be located, developed, lifted and sent for chemical analysis;

f. Post-Mortem must be conducted by two doctors in the district hospital, one of them, as far as possible, should be incharge/head of the district hospital. Post-Mortem shall be videographed and preserved;

g. Any evidence of weapons, such as guns, projectiles, bullets and cartridge cases, should be taken and preserved. Wherever applicable, tests for gunshot residue and trace metal detection should be performed;

h. The cause of death should be found out, whether it was natural death, accidental death, suicide or homicide.

4. A magisterial inquiry under Section 176 of the Code if Criminal Procedure must invariably be held in all cases of death which occur in the course of police firing and a report thereof must be sent to the Judicial Magistrate having jurisdiction under Section 190 of the Code.

5. The involvement of NHRC is not necessary unless there is serious doubt about independent and impartial investigation. However, the information of the incident without any delay must be sent to NHRC or the State Human Rights Commission, as the case may be.

6. The injured criminal or victim should be provided medical aid and his/her statement recorded by the Magistrate or Medical Officer with certificate of fitness.

7. It should be ensured that there is no delay in sending FIR, diary entries, panchnamas, sketch, etc. to the Court concerned.

8. After full investigation into the incident, the report should be sent to the competent court under Section 173 of the Code. The trial, pursuant to the charge-sheet submitted by the investigating officer, must be conducted expeditiously.

9. In the event of death, the next of kin if the alleged criminal/victim must be informed at the earliest.

10. Six-monthly statements of all cases where deaths have occurred in police firing must be sent to NHRC by DGPs. It must be ensured that the six-monthly statements reach the NHRC by the 15th day of January and July, respectively. The statements may be sent in the following format along with post-mortem, inquest and, wherever available, the inquiry reports:(i) Date and place of occurrence, (ii) Police station, district, (iii) Circumstances leading to deaths: (a) Self-defense in encounter, (b) In the course of dispersal of unlawful assembly, (c) In the course of affecting arrest ; (iv) Brief facts of the incident ; (v) Criminal Case no. ; (vi) Investigating agency (vii) Findings of the magisterial inquiry/inquiry by senior officers: (a) disclosing, in particular, names and designations of police officials, if found responsible for the death; and (b) whether use of force was justified and action taken was lawful.

11. If on the conclusion of investigation the materials/evidence having some on record show that death had occurred by use of firearm amounting to offence under IPC,

disciplinary action against such officer must be promptly initiated and he be placed under suspension.

12. As regards compensation to be granted to the dependents of the victim who suffered death in a police encounter, the scheme provided under Section 357-A of the Code must be applied.

13. The police officer(s) concerned must surrender his/her weapons for forensic and ballistic analysis including any other material, as required by the investigating team, subject to the rights under Article 20 of the Constitution.

14. An intimation about the incident must also be sent to the police officer's family and should the family need services of a lawyer/counseling, the same must be offered.

15. No out-of-turn promotion or instant gallantry rewards shall be bestowed on the officers concerned soon after the occurrence. It must be ensured at all cost that such rewards are given/recommended only when the gallantry of the officers concerned is established beyond doubt.

16. If the family of the victim finds that the above procedure has not been followed or there exists a pattern of abuse or lack of independent investigation or impartiality by any of the functionaries as above mentioned, it may make a complaint to the Sessions Judge having territorial jurisdiction over the place of incident. Upon such complaint being made, the Sessions Judge concerned shall look into the merits of the complaint and address the grievances raised therein."

6. Extrajudicial Execution Victim Families Association (EEVFAM) and Ors. Vs. Union of India (UOI) and Ors [(2016) 14 SCC 578 (2)]

Excessive use of force by the uniformed personnel resulting in the death of any person necessitates a thorough enquiry into the incident. Right to Self Defence or private defence and use of excessive and retaliatory force are separate concepts and if a person exceeds the right to self or private defence by using excessive and retaliatory force then s/he

becomes an aggressor and liable to be punished. “Unfortunately, occasionally, the use of excessive force or retaliation leads to the death of the original aggressor. When the State uses such excessive or retaliatory force leading to death, it is referred to as an extrajudicial killing or execution or as this Court put it in People’s Union of Civil Liberties v. Union of India and another is called “administrative liquidation”. The Court held such killings as destructive of Rule of Law and plainly unconstitutional.

NHRC submitted its affidavit where it complained about states not following its guidelines in the true spirit, its helplessness as its powers are advisory, shortage of staff, poor quality of Magisterial Inquiry reports wherein the family of the person killed is not examined nor independent witnesses are examined and its guidelines are not being followed during these inquiries.

The Court also considered the importance of judicial inquiry and an inquiry by a body like NHRC. The Court held that “the Magisterial enquiries cannot be substituted for a judicial inquiry or an inquiry by the NHRC or an inquiry under the Commissions of Inquiry Act, 1952. Based on the pleas of NHRC the Court said that “it appears that the Magisterial Enquiry is not given its due importance but in any event, since it is an administrative inquiry is conducted in a casual manner, not a judicial inquiry, not much credence is attached to the Magisterial Enquiry Report. So even if a State decides to hold a magisterial inquiry, it does not preclude any other inquiry or it would not be a substitute for judicial or NHRC inquiry.”

7. Extrajudicial Execution Victim Families Association (EEVFAM) and Ors. Vs. Union of India (UOI) and Ors [(2017) 8 SCC 417]

The Court directed the Union of India to take note of the concerns of the NHRC and remedy them at the earliest and with a positive outlook. Unless the communications and Guidelines laid down by the NHRC (which have been prepared after wide-ranging and detailed consultations) are adhered to, the respect and dignity due to the dead and the human rights of all of us will remain only on paper.